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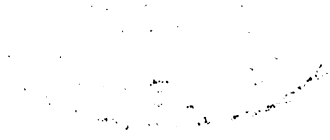
TO

MARITIME LAW DECISIONS.



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REFERENCE INDEX

TO

RECENT AND IMPORTANT

MARITIME LAW DECIS

COMPILED BY

ROBERT R. DOUGLAS.

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PREFACE.

In the following pages will be found the result, in a condensed form, of most of the recent, and several of the more important and less recent, Maritime Law Decisions, with complete Alphabetical References to the various points decided thereby. In each case the date of trial is given, together with the weight of legal authority in favor of and against the decision arrived at, and the decision itself very briefly, but, where possible, in the words used in the judgment.

Although I have taken every care to avoid errors, I fear I shall not have succeeded entirely, and I have to crave the leniency of my readers.

I think a work of this kind, gathering within itself information extracted from a variety of sources, will be found useful to mercantile men. Our law is based almost exclusively upon precedent, and the merit I claim for this publication is that, to some extent at all events, it enables parties, in case of a dispute, to appraise their relative legal positions.

ROBERT R. DOUGLAS.

LIVERPOOL.
December, 1887.

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TO

MARITIME LAW DECISIONS.

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chartered freight. *See* "Chartered Freight."

freight in dispute—derelict towed into port: Held unanimously, affirming the decision of Sir Robert Phillimore, that where a vessel is abandoned, and is brought into a port of refuge by salvors, the owners of the cargo on board are entitled to treat the contract of affreightment as abandoned, and, providing they act before the shipowner again gets possession of his ship, to have the cargo delivered to them on giving bail to cover an award of salvage without payment of any freight to the shipowner. *The Cito* (Court of Appeal, Dec. 1, 1881, Brett, Cotton, and Lindley, L. JJ.).

freight in dispute: Held, that where a ship is in distress and a vessel comes up with her, and the captain and crew leave their vessel, but on the following morning request to be allowed to return to her, which request is refused, and other men are put on board of her, and the two vessels are in company navigated into port, there is no such abandonment of the ship as to put an end to the contract of carriage, and consequently there will be freight due upon the consignees requiring delivery of the cargo. *The Leptir* (Admiralty, March 4, 1885, Butt, J.).

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mutual insurance rules not sufficiently explicit. *See* "Constructive Total Loss."

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notice thereof, when it must be given—title—sale: "It was questioned whether or not the notice must be given when the assured first heard of the loss, and the judges decided that the assured must have reasonable time to ascertain the nature of the loss. For instance, if the owner hears that his vessel is damaged, that is not sufficient information; he must know the nature of the damage. If he hears that his ship is captured in the time of war, then it is obviously a total loss. If he hears that his ship is stranded, with her bottom out and her back broken, yet still is in existence, but is in such a state that any reasonable man must know that she is in imminent danger of being utterly lost, then he must at once give notice of abandonment. When he hears that the damage is such as to cause imminent danger of total loss, then he must give notice of abandonment; but if his information be otherwise, then he can have a reasonable time to wait. Notice of abandonment is a condition precedent, and must be given directly after the assured knows that his ship is in so dangerous a condition as to be likely to prove a total loss; but in cases of uncertainty a reasonable time is allowed. But then there is this state of things

Abandonment—*continued.*

to be considered, when the ship and goods are put in danger and neither the assured nor the underwriter is at hand, then the captain of the vessel alone must act; indeed, under such circumstances, captains have sold ship and cargo where they were not insured. As a general rule, as to the propriety of sale and the title a captain can give, I say that he has in himself no right without the consent of the owners; but if it be a case of urgent necessity, then he becomes an agent, so as to bind the owner of the ship and goods. The rule is then, that, if the circumstances are such that any reasonable person having authority would sell, then the captain can sell, and what he does is binding on the owners. When, therefore, there is a constructive total loss of the ship or cargo, circumstances may or may not have arisen to justify the captain in selling, and he may or may not have sold. If the first information which the assured has of the damage to his ship or goods, although it be not of an actual total loss by the perils of the sea, is accompanied also by the information that the captain has sold them, and he has done so justifiably, that is the time when the assured should give his notice of abandonment. In the case of *Potter* v. *Rankin*, it was held that where no possible advantage could accrue to the assurer from notice of abandonment, then such notice was a mere idle ceremony and need not be given; but the decision in that case went no further. I will not say that, if it could be shown that the subject-matter was in such a condition that it would disappear before notice of abandonment could be given, the assured might not be excused from giving notice; but I say that nothing short of that would excuse him. I think to go further would let in all the dangers against which the doctrine of notice of abandonment was made part of the contract." Judgment of Brett, L. J., in *Kaltenbach* v. *Mackenzie*.

notice thereof—insufficient notice: Held unanimously, that where a managing owner, having received letters from his master that his ship has put into a port in

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distress, that he had advertised for tenders for repairs, that the surveyors said the ship could not go home under temporary repairs, that in his opinion she would not be worth the cost of repairs, and it would be better to sell her in the interest of all parties, forwards these letters to his underwriters, with the statement that this is all the information he can give, there is no sufficient notice of abandonment given to underwriters, and if the ship be sold he can only recover as for a partial loss. *King* v. *Walker* (Exchequer, May 25 and 26, and July 6, 1863, Pollock, C. B., Bramwell, Channell, and Wilde, BB.).

notice thereof—delay inexcusable: Held, Martin, B., dissenting, that where a vessel is sold as a constructive total loss abroad, and advice thereof is received by the owners in England on the 10th of a certain month, it is too late for them to give notice of abandonment on the 16th of the same month, and underwriters may refuse such notice of abandonment. *Martin* v. *Grainger* (Exchequer, May 11, 1863, Erle, C. J., Williams and Keating, JJ., Martin, Channell, and Wilde, BB.).

notice thereof—delay reasonable: Held, that a notice of abandonment need not contain the word "abandon," provided the letter giving notice of abandonment contains any equivalent expressions which inform the underwriters that it is the intention of the assured to give up to them the property insured upon the ground of its having been totally lost. Held, further, that although the assured is not to delay his notice when a total loss occurs, in order to take his chance of doing better for himself by keeping the subject-matter insured, the underwriters cannot complain of a suspense of judgment fairly exercised on the part of the assured, to enable him to determine whether the circumstances are such as entitle him to abandon. Where a vessel is stranded on the first of a certain month and surveyors on the sixth certify that attempts should be made to save cargo, and on the eleventh that it would be difficult to save cargo, a notice of abandonment given on the tenth was held to have been given without un-

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At and From

commencement of risk: Held, affirming the decision of Smith, J., and a jury, that a policy of insurance is to be construed on the same principles as other contracts, and its language to be taken in its plain and ordinary sense. The risk under such a policy, therefore, containing the clause "at and from" commences from the ship's arrival within the geographical limits of the port mentioned, provided only she be there in a state of sufficient repair or seaworthiness to be enabled to lie there in reasonable security till properly repaired and equipped for her voyage. *Haughton* v. *Empire Marine Ins. Co. Limited* (Exchequer, Nov. 22, 1865; Feb. 26, 1866, Channell and Pigott, BB.). *See* "Chartered Freight"; "Contract of Sale and Purchase."

loading at port not named in policy—change of owners: Held unanimously, affirming the decision of Cockburn, C. J., Wightman and Mellor, JJ., that where in policies of insurance on ship and goods the voyage was described as "at and from the River Plate," &c., "beginning the indenture . . . . upon the loading thereof (*i. e.*, of the goods) aboard the said ship at, as above," the policies were not vitiated if, although the whole of the cargo had not been loaded at ports in the River Plate, a part thereof had been so loaded, and the vessel had there changed hands, and a new adventure begun. Per Bramwell, B.: "The risk is to commence on the loading of those goods which may be loaded in the River Plate, and as to other goods loaded for the voyage from the time of their being brought there." *Carr* v. *Montefiore* (Exchequer, May 11, 1864, Erle, C. J., Bramwell, Channell, and Pigott, BB., Willes and Keating, JJ.). *Refer* p. 85.

Authorities

interrupting discharge. *See* "Lay Days," p. 138.

Auxiliary

screw, substituted expense. *See* "General Average."

Average

adjustment—bill of lading exceptions—fire. *See* "General Average."

adjustment—incorrect and paid upon: Held, confirming the decision of the Lord Ordinary (Trayner), that if an underwriter pay a claim in accordance with an average adjustment, which he discovers after payment to have been adjusted in error, it is competent for him to reclaim the amount so paid. *The Summerlee* (Court of Session, Edinburgh, May 19, 1887.)

bond—Liverpool form. *See* "General Average."

or claim arising from jettison or leakage. *See* "Special Clauses."

under three per cent.—time policy—voyages: Held, reversing the decision of Stephen, J., that where a time policy on ship contains the clause, "Warranted free from average under three per cent., unless general, or the ship be stranded, sunk, or burnt," the amount of the average loss must be calculated at the end of every separate and distinct voyage, when in the ordinary course of business the damage to the ship comes to be repaired, and general average losses settled, and that the losses on different voyages within the period covered by the policy cannot be added together to make the claim amount to three per cent. *Stewart & Co.* v. *The Merchants' Marine Ins. Co. Limited* (Court of Appeal, Nov. 3, 4, and Dec. 7, 1885, Lord Esher, M. R., and Cotton and Lindley, L. JJ.).

Award,

chances of appeal. *See* "Salvage," p. 195.

rule as to two-thirds carrying costs. *See* "Collision," pp. 68, 69.

salvors disagreeing as to distribution of, *see* "Salvage," p. 197.

Bad

faith, damages for arrest of ship. *See* "Arrest of Ship."

weather preventing discharge. *See* "Lay Days."

weather preventing loading. *See* "Lay Days."

weather preventing vessel being made "free of pratique." *See* "Charter-party," p. 48.

Bad—*continued.*

workmanship. *See* "Ship Repairers."

workmanship, shipowner's inspector overlooking same. *See* "Ship Repairers."

Bail,

commission on. *See* "Arrest of Ship."

bond, co-owner's liability. *See* "Co-ownership."

Ballast

or cargo ship, Mersey Act. *See* "Harbour Authorities."

Bankruptcy

of ship repairers, delay in delivery. *See* "Ship Repairers."

Barge

not "propelled by oars"—ship "in distress on the shore," &c.: Held unanimously, reversing the decision of Sir Robert Phillimore, that a barge used for carrying mud out of a river, having no internal means of propulsion, not being "propelled by oars," is a ship within the meaning of the Merchant Shipping Act, 1854. Held, further, that the words "in distress on the shore" have to be read so as to include vessels in distress without being actually aground or in contact with the shore. *The Mac* (Court of Appeal, June 30, and July 3, 1882, Lord Coleridge, C. J., and Brett and Cotton, L. JJ.).

Barratry,

illegal shipment of deck cargo. *See* "Deck Cargo."

of master. "It seems clear, on the authority of *Earle* v. *Rowcroft*, that if the master of a vessel, acting within what otherwise would be the extent of his authority, contravenes some positive law, and thereby causes injury to his owners, this will be barratry in the master, notwithstanding that the purpose of the thing done was to benefit the owners. But to constitute barratry there must necessarily be an absence of consent and knowledge on the part of the owner." (Judgment of Cockburn, C. J., in *Wilson* v. *Rankin*.)

of master—warranted to tow: Held, reversing the finding of the jury, that the master of a vessel which, according to her policies of insurance, was warranted to be towed in and out of a certain port, was not guilty of barratry

Barratry—*continued.*

in disregarding such warranty, and endeavouring to make the port under his own steam and without the assistance of a tug, there being no fraudulent breach of duty induced by motives of self-interest or of malice to the owners, or any disregard of a law it was his duty to obey, and that consequently the breach of warranty could not be set aside by a plea of barratry of master. *Wilson, Harroway, and Henderson Law* v. *National Insurance Co.* (Supreme Court, Dunedin, 1886, before Williams, J., and a special jury).

smuggling—vessel seized. *See* "Capture and Seizure."

wilful default not necessarily barratry. *See* "Cargo Claims," p. 35.

Beaching Vessel.

See "Harbour Authorities."

Being

a re-insurance, not so stated. *See* "Re-insurance."

Belligerents

extinguishing lights. *See* "Capture and Seizure."

preventing salvage. *See* "Capture and Seizure."

Berth,

unsafe—liability of harbour authorities. *See* "Harbour Authorities."

Bill

drawn by master. *See* "Master's Wages, &c."

Bill of Lading.

See "Seaworthiness."

action of holders rendering them liable: Held, that although the indorsees of a bill of lading indorsed simply for the purpose of enabling them to recoup themselves for advances made to the indorsers, and with no intention of passing the property, are not liable under the Bills of Lading Act (18 & 19 Vict. c. 111), if they, as holders of the bill of lading, entitled to delivery of the goods on certain terms as to freight, demurrage, &c., present the same and demand delivery of the goods, they thereby *primâ facie* offer to perform those terms of the bill of lading upon which alone the goods are deliverable to them. *Allen* v.

Bill of Lading—*continued.*

Coltart & Co. (Queen's Bench, May 29, and June 12, 1883, Cave, J.).

all liabilities per, *see* "Deviation."

all other conditions per charter-party. *See* "Lay Days," p. 134 and p. 49.

at less than chartered freight. *See* "Freight."

ante-dated—master's duty: Held unanimously, that although a master is not bound to superintend in person the receipt and stowage of goods, he must inform himself of the fact and time of shipment by an examination of the mate's receipts or the log-book, or otherwise, before he signs a bill of lading for the goods, and he must not rely upon statements made by the ship's agents or others. *Stumore Weston* v. *Breen* (House of Lords, Dec. 10, 1886, Lords Watson, Blackburn and Fitzgerald).

cargo forwarded partly in another vessel: Held, that if bills of lading be signed for certain goods as shipped on board a certain vessel, and the goods, or part of them, be not shipped upon such vessel, but upon another vessel arriving later at port of discharge than the first-named vessel, the owners of the cargo have a claim upon the shipowners for loss of market, &c., consequent upon the delay in delivery of goods. *Smith, Edwards & Co.* v. *Tregarthen* (Liverpool County Court, March 21, 1887, Judge Collier).

charter making same conclusive evidence as to quantity shipped. *See* "Charter-party," p. 52.

conditions of same not consistent with terms of charter-party. *See* "Charter-party," p. 49.

consignee retaining same in hand: Held unanimously, affirming the decision of Field, J., that the consignee of a bill of lading who has retained the same in his own hands and not indorsed it over to purchasers of cargo, is a consignee of the goods within the meaning of the Bill of Lading Act, 1855, s. 1, and liable to be sued by the owner of the vessel for demurrage, in consequence of detention in taking delivery on the part of the purchaser of the cargo to whom the cargo has been

Bill of Lading—*continued.*

delivered upon orders signed by the said consignee. *Fowler* v. *Knoop* (Court of Appeal, Nov. 18, 19, and Dec. 10, 1878, Bramwell, Brett, and Cotton, L. JJ.).

construction of, real and not proximate cause. *See* "Cargo Claims," p. 37.

damage by rats not excepted. *See* "Cargo Claims," p. 39.

deliver to ———, looking to them for freight and without recourse to us: Held unanimously, affirming the decision of Martin and Channell, BB., Pigott, B., dissenting, that where a bill of lading is indorsed by a consignee in the above terms in favour of wharfingers, the said consignee is not relieved from liability for freight under the bill of lading, unless the indorsement has been seen and assented to by the captain of the ship; the consignee being *primâ facie* liable, it lies on him to show that the liability of third parties was in fact substituted. *Lewis* v. *McKee* (Exchequer Chamber, Dec. 3 and 4, 1868. Willes, J., delivered judgment of Court).

delivery to holder of one part: Held unanimously, affirming the decision of the Court of Appeal (Bramwell and Baggallay, L. JJ., Brett, M. R., dissenting), reversing a prior decision of Field, J., that where any one of a set of bills of lading made in parts is produced to the master of a ship by the consignee or indorsee, and the master has no notice or knowledge of any prior indorsement of one of the other parts, he is justified in delivering the goods upon the part presented to him; but if he has notice or knowledge of two conflicting claims he must deliver to the rightful holder at his peril, or interplead. *Glynn, Mills & Co.* v. *East and West India Docks Co.* (House of Lords, July 3, 4, and 6, and August 1, 1882, Lord Chancellor Selborne, Earl Cairns, and Lords O'Hagan, Blackburn, Watson, and Fitzgerald). *Refer* p. 92.

discharge from ship's tackles: Held unanimously, affirming the decision of Grove and Mathew, JJ., and a prior decision of Huddleston, B., that where a consignee

Bill of Lading—*continued.*

demanded delivery of goods direct into lighters instead of upon the quay, under a clause in a bill of lading that same were to be delivered "from ship's tackles," the shipowner was entitled to refuse, in virtue of a custom of the port of discharge to deliver first on the quay, the principle covering such cases being that, unless the terms of the bill of lading are clearly contrary to the ordinary custom of the port, such custom must be read into it. *Marzetti* v. *Smith* (Court of Appeal, March 3 and June 19, 1883, Brett, M. R., and Lindley and Fry, L. JJ.).

excepting dangers and accidents of the seas or navigation —collision. *See* "Cargo Claims," pp. 35, 38.

excepting damage by fire: Held, that the proper construction of bills of lading clauses, according to which owners are not liable for fire and its consequences, is that the contract of owners as common carriers is subject to the specified exceptions, and not that their liability to contribution in general average as owners of the ship is to be taken away. *Schmidt* v. *The Royal Mail Steamship Co.* (Queen's Bench, May 12, 1876, Blackburn and Lush, JJ.). *Crooks* v. *Allen* (Queen's Bench, Nov. 23 and Dec. 20, 1879, Lush, J.).

excepting damage by fire—water used to extinguish same. *See* "General Average."

excepting damage to cargo: however caused—unseaworthiness. *See* "Seaworthiness."

excepting management or navigation—re-stowage. *See* "Cargo Claims," p. 44.

excepting negligence of servants. *See* "Cargo Claims," p. 36.

excepting perils of the seas. *See* "Cargo Claims," pp. 36, 37, 45.

freight payable as per charter-party: Held unanimously, that the above clause in a bill of lading incorporates therein the conditions of the charter-party as to rate of freight and payment thereof only, and that a shipowner has no lien upon the goods shipped by a charterer under one bill of lading for differences in freight

Bill of Lading—*continued.*

consequent upon other bills of lading being signed at a less rate of freight than the rate stipulated for in the charter-party, the lien under the bill of lading being a lien for freight as per charter-party upon the goods covered by that bill of lading. *Fry* v. *The Chartered Mercantile Bank of India, London, and China* (Common Pleas, June 21, 1866, Erle, C. J., M. Smith and Byles, JJ.). *Refer* p. 114.

general ship—charter unknown to shippers of cargo. *See* "Cargo Claims," p. 41.

indorsement—indorsee not liable: Held, that where an indorsee of a bill of lading has indorsed it over, he not being the person to whom the said property would ultimately pass, after such indorsement, he does not remain liable for freight. *Smurthwaite* v. *Wilkins* (Common Bench, Feb. 10, 1862, Erle, C. J., and Williams, J.).

indorsement for value by fraudulent indorser: Held unanimously, reversing the decision of Dr. Lushington, that where a bill of lading which the indorser has got into his possession by fraud, has been by him indorsed for value to an innocent purchaser, such indorsement is good notwithstanding the fraud. *Pease* v. *Gloahec, The Marie Joseph* (Privy Council, Aug. 4, 1866, Right Hon. Lord Chelmsford, Knight-Bruce and Turner, L. JJ., Sir J. T. Coleridge, and Sir E. V. Williams).

indorsement by way of security: Held unanimously, reversing a decision of the Court of Appeal (Brett, M. R., and Baggallay, L.J., Bowen, L.J., dissenting), and affirming a prior decision of Field, J., that where a shipper of goods has indorsed a bill of lading in blank and delivered it to the indorsee, simply by way of security for money advanced, the property in the goods does not thereby pass to the indorsee within the meaning of sect. 1 of the Bills of Lading Act (18 & 19 Vict. c. 111), so as to render him liable in an action by the shipowner for freight, when the goods themselves did not realize on a sale at the port of discharge sufficient to pay the freight thereupon. *Sewill* v. *Burdick* (House of Lords, Nov. 4, 6, 7, and Dec. 5, 1884, Lord

Bill of Lading—*continued.*

Chancellor Selborne, Lords Blackburn, Bramwell, and Fitzgerald).

lien for part freight. *See* "Acceptance in Exchange for Documents."

limitation of liability: Held, that where in a bill of lading for certain cattle the shipowners state that they will in no case be responsible for exceeding 5*l.* for each of the animals, this limitation does not apply to loss or damage arising from a breach of the shipowner's duty to provide a ship fit for its purpose; and that therefore they are liable for more than 5*l.* per head if the cattle become infected with a disease in consequence of them or their servants failing to have the ship properly cleansed and disinfected before receiving the cattle on board. *Tattersall* v. *National Steam Navigation Co. Limited* (Queen's Bench, March 11, 1884, Day and Smith, JJ.).

loss of market. *See* p. 18, and pp. 39, 42.

naming improper port—lighterage. *See* "Charter-party," p. 48.

nominal freight—cargo—ship's account. *See* "Mortgage."

none made, charter-party lien—general ship. *See* "Lien."

not accountable for leakage. *See* "Cargo Claims," pp. 41, 43. *Refer* p. 218.

not conclusive as to quantity shipped. *See* "Charter-party," p. 52. *Refer* p. 216.

short delivery: Held unanimously, affirming the decision of Grove, J., that where goods have been floated alongside of a ship, and mate's receipts given for same, and bills of lading subsequently signed for the quantity stated in the said mate's receipts, and the vessel on discharging delivers less than the bills of lading quantity, all taken on board being delivered, the holder of the bill of lading is not entitled to make a deduction from the freight for short delivery; a bill of lading, apart from the Bills of Lading Act, not being conclusive against a shipowner, and he not being liable in respect of goods not actually shipped. *Thorman* v. *Burt, Boulton & Co.* (Court of Appeal, March 2, 1886, Lord Esher, M. R., Lindley and Lopes, L. JJ.).

Bill of Lading—*continued.*

short delivery: Held unanimously, reversing the decision of Pollock, B., that in the case of a timber cargo, not liable to be stolen, if a shipowner can prove that all the cargo taken on board has been delivered, it rests with the consignees to prove short delivery, and if no tally of the output be kept either by the ship or receivers of cargo, but the pieces simply counted after being stacked, the Court will hold that the shipowner has satisfied the burden thrown upon him, of proving that notwithstanding the bills of lading he had delivered all the timber received on board, and will not hold him liable for short delivery. *Elliott, Lowrey & Co.* v. *Dobell & Co.* (Court of Appeal, June 16, 1887, Lord Esher, M. R., Lindley and Lopes, L. JJ.). *Refer* pp. 53, 216.

signature thereof by agent: Held unanimously, affirming the decision of Grove, J., that a signature to a bill of lading of an agent "by authority of the captain" is not a signature by or for the owner, the agent being the agent of the captain and not of the owner, and the owner is not liable under such bill of lading. *Thorman* v. *Burt, Boulton & Co.* (Court of Appeal, March 2, 1886, Lord Esher, M. R., and Lindley and Lopes, L. JJ.).

triplicate, tender of two sufficient. *See* "Contract of Sale and Purchase."

warranty as to seaworthiness. *Refer* pp. 45, 209, 210.

weight, contents, and value unknown. *See* "Cargo Claims," p. 45.

Bill of Sale,

sale by agreement: Held, that a sale of a ship by written agreement, although the agreement was not a bill of sale, is quite valid; that sect. 55 of the Merchant Shipping Act of 1854 applies to the actual agreement by which a ship is transferred, and not to an agreement to transfer; that therefore the registered owner can enforce the written agreement of sale. *Betthyany* v. *Bouch* (Queen's Bench, March, 12, 1881, Grove, J.).

Board of Trade Inquiry,

appeal by officers: Held, that by the Shipping Casualties

Board of Trade Inquiry—*continued.*

Investigations Act, 1879, no right of appeal is given from the refusal of the Board of Trade to order a rehearing of an investigation into the conduct of a certificated officer. *The Ida* (Admiralty, Feb. 16, 1886, Sir James Hannen and Butt, J.).

appeal by owners: Held, that by the provisions of the Shipping Casualties Investigations Act, 1879, no right of appeal from the wreck commissioner is given to a shipowner, though he appear as a party in the investigation and be condemned in costs; and although the Court may express an opinion that he was improperly so condemned in costs, it is powerless to give effect to its opinion. *The Golden Sea* (Admiralty, May 15, 1882, Sir James Hannen, Sir R. Phillimore, and Nautical Assessors).

master's certificate improperly suspended: Held unanimously, that a wreck commissioner has no jurisdiction to suspend a master's certificate under the Merchant Shipping Act, 1854, s. 242, where a ship has been stranded but not damaged, the Act giving jurisdiction only in cases of loss, abandonment of, or "serious damage" to, a ship. *Ex parte Storey* (Queen's Bench, Feb. 4, 1878, Cockburn, C. J., Mellor and Manisty, JJ.).

master's certificate improperly suspended—negligence not proved: Held, that where the report of a court of inquiry into a shipping casualty does not show that a default on the part of an officer, directly or by necessary inference, causes or contributes to the casualty itself, his certificate cannot be taken away or suspended. *The Arizona* (Admiralty, March 11, 18, 22, and April 20, 1880, Sir James Hannen and Sir R. Phillimore).

master's certificate improperly suspended—charges unexpected—appeal: Held, that where a wreck commissioner's court of inquiry has suspended a master's certificate and the master has appealed, he is entitled, if the charges against him in the said court of inquiry have been unexpected, to apply for leave to produce further evidence at such appeal; and if his appeal is

Board of Trade Inquiry—*continued.*

successful he is entitled to costs against the Board of Trade. *The Famenoth* (Admiralty, May 18, 1882, Sir James Hannen, and Sir R. J. Phillimore, assisted by Nautical Assessors).

Board of Trade vessel

as salvor. *See* "Salvage," p. 195.

Boiler

explosion, wear and tear—negligence of crew. *See* "Seaworthiness."

Bonâ fide Purchaser,

master's lien after sale to, *see* "Master's Wages &c."

Bond,

arresting ship before due. *See* "Bottomry."

for safe return, minority shareholders. *See* "Co-ownership."

general average bond. *See* "General Average."

liability of co-owners on bail-bond. *See* "Co-ownership."

master in fault, giving bond. *See* "Collision," p. 65.

payable on arrival of ship. *See* "Bottomry."

salvage, cargo-owners' bond. *See* "Salvage," p. 205.

Both to blame.

See "Collision."

division of damages, cargo-owners. *See* "Cargo Claims," p. 38.

Bottomry,

cargo's liability: Held unanimously, affirming the decision of Sir R. Phillimore, that where a captain having completed the repairs to his vessel in a port of distress, and having received no replies from owners of ship or cargo, fearing detention, raises money to pay for repairs on bottomry of ship, freight and cargo (the lenders not being the repairers of the ship), the bond is valid and binds the cargo. *The Karnak* (Privy Council, June 18, and July 15, 1869, Lord Romilly, M. R., Sir Wm. Erle, Sir James Colville, Sir Joseph Napier).

foreign flag: Held unanimously, reversing the decision of Sir Robert Phillimore, that whoever puts his goods on board a vessel must be taken to authorise the owner

Bottomry—*continued.*

of the vessel and his agent—the master—to deal with those goods according to the authority of the law of the country of the ship on board which they are placed; and that consequently although a vessel be in course of voyage between British ports, if she put into a port of distress the master may be authorised, although contrary to the law of England, to give a bond over the cargo on board his vessel without prior notice to the cargo-owner. *The Gaetano and Maria* (Court of Appeal, May 11, 12, and 26, 1882, Lord Coleridge, C. J., and Brett and Cotton, L. JJ.).

liability of owner of foreign ship—master's authority: Held unanimously, affirming the judgment of the Court of Queen's Bench, that the authority of a master to bind the owner of a ship is governed by its flag, and that therefore in the case of a French vessel the French law applies; but an English Court will decide a case according to English law unless the foreign law governing the case is brought properly before the Court. *Lloyd* v. *Guibert* (Exchequer, June 17, and Nov. 27, 1865, Erle, C. J., Pollock, C. B., Martin, B., Willes and Keating, JJ., and Pigott, B.).

master's authority—overcharges: Held unanimously (Fry, L. J., doubtful), affirming the decision of Butt, J., that the authority of a master to raise money on bottomry is limited as against the owners of cargo to such an amount as is necessary to enable the ship to complete her voyage in safety, and that holders of a bottomry bond, even although they were not the ship's agents, and had no interest in the repairs effected, and believed that the money was necessary, cannot recover the full amount of their bond where gross overcharges are proved to have been made in the accounts. *The Pontida* (Court of Appeal, July 25 and 28, 1884, Brett, M. R., and Bowen and Fry, JJ.).

master's authority—interest after cessation of risk: The rate of interest ordinarily payable upon a bottomry loan after safe arrival is 4 per cent. per annum, and, if the master of a ship enters into a bond providing for the payment of 10 per cent., the payment of such

Bottomry—*continued.*

interest is not binding upon owners of ship or cargo, provided the provision was entered into without their knowledge; in other respects, however, the bond may be held to be valid. *The D. H. Balls* (Admiralty, June 25th, 1878, Sir R. Phillimore).

master's authority—cargo owners to be consulted: Held unanimously, reversing the decision of the Supreme Court of the Island of Ceylon, and restoring a prior decision of the judge of the District Court of Galle, that where a vessel puts into a port of distress, and the captain having wired the shippers and received a telegram and letter asking for further particulars, does not further communicate with them, but proceeds to repair his ship and gives a bottomry bond over ship, freight, and cargo, such bottomry bond is invalid, as the receipt by owners of cargo of general information that the ship is damaged and in need of repairs, does not impose upon them the duty of supplying money for such repairs without further information, and they are entitled to have such further information, and the option of themselves providing funds before a bottomry bond is entered into. *Kleinwort* v. *Cassa Maritima of Genoa* (Privy Council, Jan. 18, 1877, Rt. Hon. Lord Blackburn, Sir James Colville, Sir Barnes Peacock, Sir M. Smith, and Sir R. P. Collier).

necessaries—foreign ship under bottomry putting into a foreign port—lien: Held, that where a foreign vessel under bottomry, having put into a foreign port on her passage home, has subsequently arrived at an English port and been arrested on the suit of the bottomry bondholder, the said bondholder has acquired a *primâ facie* right to the proceeds of the sale of the vessel, and the High Court of Admiralty has no jurisdiction over a claim in respect of necessaries supplied in the aforesaid foreign port. A lien in respect of necessaries supplied to a ship is not transferred to a party who has paid off the parties who supplied the same. *The India* (Admiralty, March 26, 1863, Dr. Lushington).

payment due on arrival of ship: Held, that an instru-

Bottomry—*continued.*

ment whereby a captain binds himself and his ship to pay a sum of money for goods supplied within "six days after my arrival," means after the ship's arrival, and is an instrument of bottomry. *The Cecilie* (Admiralty, March 11, 1879, Sir R. Phillimore).

perils of the sea—underwriter's liability—cargo undamaged—ship and freight not realising amount of bond—proximate cause of loss: Held, that where a ship, the master of which has taken up a loan on bottomry upon ship, freight and cargo, at a port of distress, the cargo being undamaged, arrives at port of discharge, and is there sold at the instance of the bondholder, and ship and freight do not realise sufficient to satisfy the bond, so that the owner of the cargo has to pay the deficiency in order to release his goods, the underwriter on cargo having paid into Court a sum sufficient to satisfy the claim for particular average and expenses, and general average under an adjustment, is not liable for anything further, the amount paid to release the goods not being a loss by perils of the sea; the proximate cause of the loss, to which alone the law has regard, being the inability of the agent of the shipowner to pay off the charge which he had for want of funds at the port of distress created on the cargo. *Greer* v. *Poole* (Queen's Bench, May 16 and 27, 1879, and March 18, 1880, Cockburn, C. J., and Lush, J.).

premature arrest—malice or gross negligence: Held, that where the holder of a bottomry bond arrests the vessel and freight on which the bond is secured before the bond is due, and the bond is paid at or before maturity, the shipowner is entitled to the costs occasioned by such premature arrest, but not, in the absence of malice or gross negligence on the part of the bondholder, to damages. *The Endora* (Admiralty, March 4, 1879, Sir R. Phillimore).

Breach

of warranty by master. *See* "Barratry."

of contract of carriage. *See* "Cargo Claims."

Breakdown
of steering gear. *See* "Collision," pp. 63, 72, and p. 151.

British
owners putting vessels under foreign flag. *See* "Foreign Flag."
seamen sailing under foreign flag. *See* "Foreign Flag."

Broker
misappropriating premium. *See* "Lien."
omitting to telegraph—loss prior to receipt of order: Held, that it is the duty of an insurance broker who has received an order to effect an insurance on a vessel on risk at the time the order is given, at once, even without the expressed consent of his client, to make use of the telegraph, so as to have the order placed, and if he neglect to do so, and the vessel be meantime lost, he is liable to make good the loss suffered by his client. *The Flamingo* (Glasgow, July 29, 1887, Sheriff Guthrie).

Building,
ship arrested for rent of yard. *See* "Lien."

Builder's
trial-trip, ship's officers not appointed. *See* "Collision," p. 74.

Bunker
space—full and complete cargo. *See* "Charter-party," p. 51.

Bunkers,
coaling port. *See* "Light Dues."

Buyer's
risk, commencement of. *See* "Contract of Sale and Purchase."

By
authority of captain. *See* "Bill of Lading," p. 21.

Bye-laws,
dock company exceeding powers of Act of Parliament. *See* "Dock Company's Bye-laws."
obedience to, cause of damage. *See* "Harbour Authorities."
River Tyne, enter north side. *See* "Collision," p. 61.

Cable,
insurance of—latent defect. *See* "Seaworthiness."
Cables
parting—inevitable accident. *See* "Collision," p. 63.
Calling
at ports not on the way. *See* "Deviation."
Calls,
liability of co-owners for. *See* "Mutual Insurance."
non-payment, policy void without notice. *See* "Mutual Insurance."
non-payment, policy void without notice, payment after advice of loss. *See* "Mutual Insurance."
non-payment, plea of unstamped policy. *See* "Mutual Insurance."
non-payment—settlements in account. *See* "Mutual Insurance."
unpaid calls—premium. *See* "Necessaries."
Canal
frozen, cargo delayed. *See* "Lay Days," p. 139.
Cancelling clause
absolute in charter, freight recoverable. *See* "Chartered Freight."
optional in charter, freight not recoverable. *See* "Chartered Freight."
owner must inform his underwriter thereof. *See* "Chartered Freight."
sea perils preventing vessel being ready to load. *See* "Chartered Freight."
war cancellation clause. *See* "Charter Party," p. 53.
Cancelling policy,
without notice. *See* "Mutual Insurance."
Capture and Seizure,
its incidence. "Supposing there was an attempt at the seizure of a ship, and the enemy was to follow the ship, and the ship to escape seizure was to run aground or run ashore: the loss would be then caused by the attempt at seizure, and it would be within the exception. I will suppose, again, that the enemy gave chase to the ship for the purpose of seizing her, and to avoid being seized she got into a bay where there was neither anchorage nor port, and the wind on shore, where, if

Capture and Seizure—*continued.*

the wind continued, it was physically certain that she must be lost: I should say, that the ship driven on shore by the wind under those circumstances was lost by the consequences of hostilities. The exception has reference to seizure and the consequences thereof, or of any attempt at seizure. I will assume that the enemy avoided the bay, and left the ship that had got into the bay. The ship was there, and if the wind changed she would get off; if it did not change she was certain to go on shore, and the ship went ashore: that would be a loss by the consequences of an attempt at seizure, and would be within the exception. I will suppose a third case, that is, that the wind did change, and that the ship got out of the bay and proceeded on her voyage, and afterwards, in the course of her voyage, was overtaken by a storm, which she would have avoided by having arrived at her port if she had not been obliged to deviate and delay by reason of the attempt at seizure. If she founders in the storm, there would be then a loss, which never would have occurred if there had not been the attempt at seizure which I spoke of, but that loss would not be connected in that proximate relation with that which, in the ordinary course of events, is necessary to connect the loss with what is called the cause of the loss. The ship going out of the bay and proceeding on her voyage, it is not a consequence, in the ordinary course of events, that, if a storm should overtake her, she would sink in the course of that storm; yet I suppose, as a fact found in the case, that if she had not been obliged to deviate she would have been safe in port before the storm came on: then I should say, that although the consequence of the attempt at seizure was the cause without which the loss never would have happened, yet it is not the efficient cause, in the language of some of the judgments given in exceptions to insurance cases; the one fact is too remote from the other, and then it would be a loss by peril of the sea. Take another instance: the warranty extends to loss from all the

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Capture and Seizure—*continued.*

consequences of hostilities. I will assume that the ship is destined for a port where there are two channels of entrance. In one of those channels a torpedo is laid down, in the other there is none. If the ship, coming into the port, knows nothing of the torpedo, and is sunk and destroyed, then, of course, the consequences of hostilities lead directly to the destruction. The hostilities having induced the occupiers of the port to lay down the torpedo, if the ship struck on it in ignorance and was destroyed, it is the consequence of hostilities; that is the proximate cause of the loss, and so is within the exception. Take the case of the captain of the ship being aware that the torpedo is there, and for the purpose of avoiding the torpedo that is in the channel he takes the other channel into the port at the mouth of the river, and from bad navigation in the other channel the ship runs aground and is lost. In my opinion, that would be a loss not within the exception, because many ships would pass up the other channel, and such ships through good navigation could pass up safely. Therefore the ship taking to the other channel and being lost there, her loss would not be connected proximately with the consequence of hostilities, namely, the torpedo." (Judgment of Erle, C. J., in *Ionides* v. *The Universal Marine Ins. Co.*)

consequences of hostilities—lights extinguished—salvage prevented: Held unanimously, that where a vessel and cargo insured subject to the usual capture clause becomes a total loss, the master being out of his reckoning, and the light on a certain point for which he was making having been extinguished in consequence of hostilities, the hostilities are too remote a cause of the loss to relieve underwriters from their liability. Held, however, also unanimously, that if a certain portion of the cargo be saved by one of the belligerents and appropriated by them, and if a further portion of the cargo could have been saved before the vessel broke up but for the hostilities, underwriters are not liable for the loss of one or the other of such portions of

Capture and Seizure—*continued.*

cargo. *Ionides* v. *The Universal Marine Insurance Co.* (Common Bench, April 28 and 30, and May 1 and 2, 1863, Erle, C. J., and Willes, Byles and Keating, JJ.).

plundering by natives: Held, that the warranty in a policy of marine insurance "free from capture and seizure and the consequences of any attempt thereat," covers the case of a vessel temporarily seized by natives after grounding in a river in Africa, although the jury who tried the case had found that the vessel was seized to plunder the cargo and not for the purpose of keeping her, and that consequently, although the vessel became a constructive total loss by reason of the damages inflicted upon her by the natives, the underwriters were not liable, being protected by the capture clause. *Johnston* v. *Hogg* (Queen's Bench, March 3 and 21, 1883, Cave, J.).

smuggling abroad: Held unanimously, affirming the decision of Lord Coleridge, C. J., Brett and Cotton, L. JJ., and a prior decision of Field and Cave, JJ., that a warranty "free from capture and seizure" in a policy of marine insurance applies not only to capture or seizure by belligerents, but to any seizure, even if it be the result of a barratrous act of the master, such as engaging in smuggling abroad without the consent of his owners. *Cory* v. *Burr* (House of Lords, April 27 and 30, 1883, Lord Chancellor Selborne, Lords Blackburn, Bramwell and Fitzgerald).

Note from judgment of Field and Cave, JJ., referred to above:—

"Where in a policy of insurance covering barratry of master, &c., the underwriter warrants himself free from capture and seizure, a capture or seizure of the vessel consequent upon a barratrous act of the master comes within the said warranty, and the underwriter is not liable for loss. The true mode of construing the policy being to read the two clauses together, and then it will stand thus: 'assurer liable for loss by barratry except such barratry as ends in or causes capture or seizure.' To render the underwriter liable it must be shown that the assured could not have

Capture and Seizure—*continued.*

recovered upon a policy against loss by seizure by reason of the barratrous conduct of the master.

"If a loss be directly caused by seizure, it is not the less imputable to the excepted peril, because it might remotely have been due to the barratrous act."

Cardiff Drain,

duty to keep on starboard side. *See* "Collision," p. 58.

Careless

arrest of ship. *See* "Arrest of Ship."

Cargo,

abandoned vessel brought into port—no freight due. *See* "Abandonment."

abandoned vessel, crew wishing to return—freight due. *See* "Abandonment."

arrival before effecting of insurance. *See* "Premium."

bottomry. *See* "Bottomry."

bottomry—cargo owners to be consulted. *See* "Bottomry."

bottomry—foreign vessel. *See* "Bottomry.

bottomry—no sea peril. *See* "Bottomry."

bottomry—no advices from owners of cargo. *See* "Bottomry."

brought alongside at ship's risk. *See* "Charter-party," p. 52.

commencement of risk. *See* "At and From," and p. 92.

contribution to salvage—bond. *See* "Salvage," p. 205.

damaged, shipowners insisting upon re-shipment of. *See* "Discharge of Cargo."

damaged, cargo-owners asking delivery at intermediate port. *See* "*Pro-ratâ* Freight."

delayed through canal being frozen. *See* "Lay Days," p. 139.

delayed through river being frozen. *See* "Lay Days," p. 137.

delivery at intermediate port. *See* "*Pro-ratâ* Freight."

delivery to holder of one part of bill of lading. *See* "Bill of Lading," p. 17.

delivery to port of destination—freight underwriter. *See* "Sue and Labour Clause." *Refer* p. 47.

Cargo—*continued.*

discharged and sold at port of distress. *See* "*Pro-ratâ* Freight."

expenses of discharging. *See* "Port of Distress."

expenses of re-loading. *See* "Port of Distress."

expenses of warehousing. *See* "Port of Distress."

flat and cargo raised by flat owner. *See* "Salvage," p. 201. *Refer* p. 150.

floating the ship—ship floating on her cargo. *See* "Stranded, Sunk, or Burnt."

last on board liable for demurrage. *See* "Lay Days," p. 134.

lien on, for removal of wreck. *See* "Limitation of Liability." *Refer* p. 201.

mixed and undistinguishable by perils of the seas. *See* "Total Loss."

not ready—prompt dispatch. *See* "Lay Days," p. 140.

not total loss if might have been saved. *See* "Wreck."

on deck at shipper's risk—jettison. *See* "General Average," "Deck Cargo."

on ship's account, mortgagee's right to freight. *See* "Mortgage." *Refer* next page.

part delivered. *See* "Stoppage in Transit."

part jettisoned and sold. *See* "Freight, Lump sum."

part laden before commencement of risk. *See* "At and From." *Refer* p. 92.

partially destroyed—freight. *See* "Freight Advanced."

refusing to contribute to average—unseaworthiness. *See* "Seaworthiness."

renewal of, after forced discharge: Held, that when a cargo has been shipped and the voyage is delayed and discharge rendered necessary through accident (collision, other vessel to blame), and the owners of the vessel exercise their lien on cargo for freight, and refuse to ship a fresh cargo except on fresh terms as to freight, &c., the cargo-owner is bound to make inquiry as to the said terms, so as to minimise as far as possible the loss at port of discharge. *The Blenheim*

Cargo—*continued.*

(Admiralty Division, June 7 and August 4, 1885, Sir James Hannen). *Refer* pp. 106, 123.

sale and purchase of. *See* "Contract of Sale and Purchase"; "Acceptance in exchange for documents."

sale of condemned vessel. *See* "Constructive Total Loss." *Refer* p. 3.

salvage of unseaworthy vessel. *See* "Salvage," p. 204.

salved and sold at port of distress. *See* "*Pro ratâ* Freight." *Refer* pp. 3, 239.

saved, vessel lost, lien for expenses. *See* "Salvage," p. 199.

saved, vessel lost, life salvage. *See* "Salvage," p. 201.

shipped without bill of lading—general ship. *See* "Lien."

ship's account—collision: Held, that in case of total loss by collision a shipowner who has cargo of his own on board is entitled to recover in lieu of freight what would have been the enhanced value of the cargo at its destination, less the expense of earning that enhanced value. *The Thyatira* (Admiralty, July 30th, 1883, Sir James Hannen).

sold at port of distress, right to and risk of proceeds. *See* "Total Loss."

sold at port of distress—freight. *See* "Freight, Lump sum."

sold for freight. *See* "Bill of Lading," p. 19.

sold free on board. *See* "Stoppage in Transit."

sold to arrive—transfer of interest—policies. *See* "Sale of Cargo."

to and from alongside, lighterage. *See* "Charter-party," pp. 52, 54.

towage master's agreement, cargo's proportion. *See* "Salvage," pp. 205, 206, and p. 122.

unfit for shipment. *See* "General Average."

unlawful stowage of. *See* "Master's Agency," and p. 103.

used for fuel. *See* "General Average."

value at shipment. *See* "General Average."

water pumped on, to extinguish fire. *See* "General Average," and p. 114.

Cargo Boat,
passenger accommodation destroyed by perils of the seas. *See* "Damages not repaired."

Cargo or Ballast Ship,
Mersey Acts. *See* "Harbour Authorities."

Cargo Claims,
act of God: Held unanimously, reversing the decision of the Common Pleas (Brett and Denman, JJ.), that a loss occasioned by the act of God is a loss arising from and occasioned by the agency of nature, which cannot be successfully guarded against by the ordinary exertions of human skill and prudence. Where a mare died at sea, and a jury found the loss to have been caused partly by excessive bad weather and partly by the fright and struggling of the mare, and that there was no negligence on the part of the owners: held, that upon the finding of the jury the shipowner was not liable. *Nugent* v. *Smith* (Court of Appeal, Jan. 24, and May 29, 1876; Cockburn, C. J., James and Mellish, L. JJ., Mellor, J., and Cleasby, B.).
barratry—negligence—bill of lading: Held unanimously, affirming the decision of the Court of Common Pleas (Erle, C. J., Willes, M. Smith, and Keating, JJ.), that where a collision has been brought about by the "wilful default" of those in charge of a steamship, the words "wilful default" in the Act of Parliament did not make the act wilful for all purposes, whereas to constitute barratry there must be an unlawful act wilfully done. Held, also, that a loss by collision brought about by negligence of those on board a vessel is not a loss by "dangers and accidents of the seas or navigation" within the meaning of the bill of lading clause excepting same. *Grill* v. *The General Iron Screw Collier Co., Limited* (Exchequer, May 12, 1868, Kelly, C. B., Bramwell, B., Blackburn and Hannen, JJ., Channell, B.).
bill of lading exceptions: Held unanimously, reversing the decision of the First Division of the Court of Session (Lord President Inglis, and Lords Deas, Mure,

Cargo Claims—*continued.*

and Shand), that, although a bill of lading except "perils of the seas, however caused; damage or injury, however caused, &c.," it is nevertheless incumbent upon the shipowner to provide a ship fit for the purpose of conveying the goods; and if it be proved that the vessel was not seaworthy and fit to carry goods in safety, the shipowner must be held to be liable for the damage if damage result. *Steel* v. *State Line SS. Co.* (House of Lords, July 19 and 20, 1877; Lord Chancellor Cairns, Lords O'Hagan, Selborne, Blackburn, and Gordon).

bill of lading excepting negligence: Held unanimously, varying the decision of Pollock, B., and Manisty and Stephen, JJ., that where a bill of lading clearly states that the shipowner is not to be responsible for negligence of masters or mariners, and a collision takes place between two vessels owned by the same owners, and both vessels are found to blame, the intention of the parties being that the stipulation in the bill of lading is to apply to the carrying vessel only, the owners, as owners of the non-carrying vessel, are liable for one-half of the loss, but not for the loss occasioned by the carrying vessel, and specially excepted in the bill of lading. *The Chartered Mercantile Bank of India* v. *The Nederlands India Steam Navigation Co., Limited* (Court of Appeal, Nov. 10, 11, 13, 14, 15, 1882, and Jan. 17, 1883; Baggallay, Brett, and Lindley, L. JJ.). *Refer* pp. 50, 58, 59, 149.

carrying damaged cargo to earn full freight. *See* "*Pro ratâ* Freight."

cattle free of mortality or jettison—seaworthiness: Held, confirming the decision of Bovill, C. J., that a clause in a bill of lading in respect of cattle containing the following, amongst other exceptions: "Ship free in case of mortality. The owners will not be liable for any loss occurring from suffocation or other causes. The ship not liable for accident, injury, mortality, or jettison," does not cover negligence or unseaworthiness on the part of the ship or owners; and that where a

Cargo Claims—*continued.*

vessel proceeds to sea insufficiently ballasted, and falls over on her beam ends, necessitating the jettison of some of the cattle, and causing the suffocation of others, the owners are liable for the loss. *Leuw* v. *Dudgeon* (Common Pleas, Nov. 5, 1867, Willes and Byles, JJ.).

collision not a peril of the sea. "Now in construing a policy of insurance, it is the *causa proxima* which is looked at; but in the case of a bill of lading that is not so, for there you look at what is the real moving cause of the loss. . . . . The moment it is shown that the real moving cause of the loss was the shipowner's negligence, then that is a loss by a cause which is not within the excepted perils. Now, suppose that the real moving cause of the loss is not one of the excepted perils, but is the result of the negligence of some one other than the defendant, does the same reasoning apply? You are to take the real moving cause of the loss. If you are to accept the reasoning in the first case, you must accept it in this also. There is no exception in the bill of lading of a loss caused by the negligence of any one other than the defendant. . . . . I hold, therefore, that there are three classes of collisions in which the loss cannot be said to be the result of an excepted peril, viz., where there has been negligence on the part of the carrying ship; where the collision has solely been the result of the negligence of another vessel; and where the collision has been the result of the joint negligence of both vessels." Judgment of Lord Esher, M. R., in *The Xanthe* (Court of Appeal, June 7 and 8, 1886). *Refer* p. 50.

collision not a peril of the sea: Held unanimously, reversing the decision of Hawkins, J., that in a case of collision which a jury has found was caused by the starboarding of the helm of one of the vessels, which starboarding they found was not, however, a negligent act of those on board, the jury not expressing any opinion as to the manœuvring of the other vessel, the holders of a bill of lading for goods shipped on board the first-named vessel, which excepted only perils

Cargo Claims—*continued.*

of the sea, are entitled to recover the value of the cargo shipped and non-delivered, such collision not being covered by the exception before-mentioned; the finding of the jury being only capable of justification on the ground that the last-named was at fault, and that the first-named was placed in such peril by her reckless navigation as to excuse them from obedience to rules. *Wordley & Co.* v. *Michell & Co.* (Court of Appeal, March 1, 1883, Brett, Cotton, and Bowen, L. JJ.).

collision not a peril of the sea. *See* "Collision," p. 69.

collision—both vessels to blame: Held, that the rule that in cases of collision when both vessels are to blame, the damages are to be equally divided, does not apply to actions by owners of cargo for breach of contract of carriage, to recover damages for loss or injury to their goods, and that the plaintiffs in such actions are entitled to recover from the owners of the carrying ship. *Burness & Sons* v. *The Persian Gulf Steamship Co., Limited* (Admiralty, March 24, 1885, Butt, J.).

collision—both vessels to blame: Held, that the owners of cargo on board a wrong-doing vessel, provided they are neither owners nor part-owners therein, both vessels having been found to blame, can recover from the owners of the other vessel one-half of their loss by the collision, and have, equally with the damaged vessel, a distinct and separate remedy, either *in rem* or *in personam*, against the vessel doing the damage. *The Milan* (Admiralty, Dec. 3 and 17, 1856, Dr. Lushington).

collision—negligence: Held unanimously, that where a vessel, as a consequence of the negligence, mismanagement, and improper conduct of those on board, comes into collision with another vessel and is, as a consequence, lost, this casualty is not an "accident or danger of the sea," and consequently not excepted in the bill of lading, and the shipowner is liable to the cargo-owner for the amount of the loss sustained by him. *Lloyd* v. *General Iron Screw Collier Co., Limited*

Cargo Claims—*continued.*

(Exchequer, May 30, 1864, Pollock, C. B., Martin, Bramwell, and Channell, BB.).

contract of carriage. *See* "Seaworthiness."

damage by rats: Held unanimously, affirming the decision of Keating, J., that where a cargo is delivered damaged by rats, notwithstanding that the shipowner has taken every precaution to keep his vessel clear of vermin, the exceptions in the bill of lading not covering such damage, the shipowner is liable for same. *Kay* v. *Wheeler* (Exchequer, Feb. 4, 1867, Kelly, C. B., Channell, B., Mellor, J., Pigott, B., and Lush, J.).

damage by rats: Held, that where cargo is eaten and damaged by rats, there being no exception covering same in the bills of lading, such damage is not a peril of the sea; and as it is not a thing against which it is impossible to guard, the shipowner is liable to make good the damage. *The Carlotta, Bliss* v. *Gorney* (Southern District Court of New York, June, 1877, judgment of Blatchford, J.).

damage by rats: Held unanimously, reversing the decision of the Court of Appeal (Brett, M. R., Bowen and Fry, L. JJ.), and restoring a prior decision of Lopes, J., that where a cargo is damaged in consequence of rats eating through a leaden pipe and so allowing sea-water to enter, that is a danger, accident or peril within the contemplation of both parties to a contract of affreightment; it is clearly not any less such a peril or accident because the hole through which the sea came was made by vermin from within the vessel, and not by a sword-fish from without. *Hamilton, Fraser & Co.* v. *Pandorf & Co.* (House of Lords, July 14, 1887, Lord Chancellor, Lords Herschell, Watson, Bramwell, Fitzgerald, and Macnaughten).

damages for late delivery of goods: Held unanimously, affirming the decision of Sir James Hannen, that owners of cargo in a collision action cannot recover as damages loss occasioned by the late delivery of their goods; the loss being too remote in view of the uncertainty of the duration of a sea voyage. *The*

Cargo Claims—*continued.*

Notting Hill (Court of Appeal, August 3, 1883, and April 30, 1884, Brett, M. R., and Bowen and Fry, L. JJ.). *Refer also* p. 42.

defect in shaft—warranty of seaworthiness. *See* "Seaworthiness." *Refer* p. 153.

detention of perishable goods: Held, that where a steamship having perishable goods on board, not usually insurable against detention, comes into collision on leaving port of loading with another vessel, and is arrested for excessive bail, which owners refuse to pay, and the vessel is in consequence detained, the owners must exercise all due dispatch in forwarding the cargo to its destination, or they will be held liable for the damage and deterioration it sustains in consequence of the delay. *Grew, Widgery & Co.* v. *Great Western SS. Co., Limited* (Queen's Bench, Feb. 21, 1887, A. L. Smith, J., and a special jury).

deviation—liberty to call at any ports in any order: Held, that a general steamer which accepts cargo in the Mediterranean as bound for Dunkirk, with liberty to call at any ports in any order, cannot, without a breach of contract, proceed to Glasgow before proceeding to Dunkirk, the clause as to "liberty to call" refers only to ports fairly on the route from the Mediterranean to Dunkirk. *Leduc & Co.* v. *Ward and others* (Queen's Bench, June 29, 1886, Denman, J.).

deviation—saving property and not life: Held unanimously, affirming the decision of Lindley, J., that where a steamer deviates from her voyage in order to assist a vessel in distress, beyond what is required to save life, and is lost during such deviation, and the loss is attributable to such deviation, the owners of the cargo can recover from the shipowner the value of the cargo, unless the right to tow vessels is expressly stipulated for in the contract between the shipowner and the owners of cargo. *Scaramanga* v. *Stamp and Gordon* (Court of Appeal, Dec. 16, 1879, and April 29, 1880, Cockburn, C.J., and Bramwell, Brett and Cotton, L. JJ.). *Refer* p. 105.

freight advanced: Held, that where according to char-

Cargo Claims—*continued.*

ter-party a proportion of freight is payable one month after sailing, and the vessel is cast ashore through the negligence of those on board, the charterers can recover from the owners of the ship the freight so paid in advance and premium of insurance thereupon, in addition to the prime cost of the cargo. *The Great Indian Peninsula Railway* v. *Turnbull* (Queen's Bench, June 25, 1885, Denman, J.).

general ship—shippers without knowledge of any charter: Held, that where a master puts his ship on the berth as a general ship, and the shippers have no knowledge of the existence of a charter-party, the contract in the bill of lading is between the shippers and the owner, and not the shippers and the charterer, &c., and the indorsee of such bill of lading has a right of action against the owners of the ship for damage to his goods. *The Figlia Maggiore* (Admiralty, Feb. 26 and April 21, 1868, Sir R. Phillimore). *Refer* p. 144.

improperly fastened port. *See* "Indemnity Association"; "Seaworthiness."

improper stowage—not accountable for leakage: Held unanimously, reversing the decision of Dr. Lushington, that where goods are improperly stowed in a vessel in proximity to other goods, by the heating of which they become damaged or destroyed, and it is proved that neither the shipper nor shipowner was aware that it was dangerous to stow them together, if the shipowners are ignorant of the consequences of taking such a cargo, it cannot amount to culpable negligence on their part to stow in the only place they could be stowed the goods which the charterers tendered to form part of the cargo. In the absence of proved negligence the words "not accountable for leakage" cover all leaking, whether ordinary leaking or very much in excess thereof. *The Helene; Ohrloff* v. *Briscoll* (Privy Council, Aug. 4, 1866, Lord Chelmsford, Knight-Bruce and Turner, L. JJ., Sir J. T. Coleridge, and Sir E. V. Williams). *Refer* p. 43.

improper stowage—neglect of shipowner's servants: Held, that whenever goods shipped on board a vessel

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Cargo Claims—*continued.*

have received damage through the neglect or misconduct of those on board the vessel the shipowner is *primâ facie* responsible to the cargo-owner. *The St. Cloud* (Admiralty, July 26, Nov. 28, 1862, and Jan. 13, 1863, Dr. Lushington).

interrogatories and answers. *See* "Interrogatories."

liability of shipowner on mate's receipts: Held unanimously, that the liability of a shipowner for goods, for which the mate of the ship has given a receipt, commences from the time of delivery to the servants of the owner, although there is no proof that the goods were ever put on board the vessel, and there is evidence that the hatches were never off during the passage from loading port to port of discharge, and that the missing goods were not on board on arrival at the latter port. *The British Columbia Saw Mill Co.* v. *Nettleship* (Common Pleas, April 21, 1868, Bovill, C. J., Byles, Keating, and M. Smith, JJ.). *Refer* pp. 20, 53, 216.

loading and sailing—warranty of seaworthiness: Held unanimously, that the warranty of seaworthiness implied in a charter-party attaches at the time of the ship's sailing, and is not exhausted on the ship's proceeding in a seaworthy condition to her loading berth; that consequently if a vessel be damaged in her loading berth, so as to make her unseaworthy, and afterwards proceeds to sea and founders, the cargo-owner is entitled to recover the value of the cargo from the shipowner. *Colin* v. *Davidson* (Queen's Bench, Jan. 11, 18, and Feb. 9, 1877, Mellor, Lush, and Field, JJ.).

loss of market—damages, basis of assessment: "The principle is now settled that whenever either the object of the sender is specially brought to the notice of the carrier, or circumstances are known from which the object ought in reason to be inferred, so that the object may be taken to have been within the contemplation of both parties, damages may be recovered for the natural consequence of the failure of that object." Judgment of Sir R. Phillimore in *The Parana*, approved by Mellish, L. J., on appeal.

Cargo Claims—*continued.*

"Damages for breach of contract must be such as may fairly and reasonably be considered as arising naturally, *i.e.*, according to the usual course of things —from such breach of contract itself, or such as may be reasonably supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it." Judgment of Lord Chief Baron in *Horne* v. *Midland Railway Co.*

"Goods imported by sea may be, and are, every day sold whilst they are at sea. . . . . The sale of goods to arrive on transfer of bills of lading, with costs, bills and insurances, is a common mercantile contract made every day. . . . . If a man purchases goods whilst at sea, no person can say for what purpose he purchases them. . . . . Therefore it seems to me that to give these damages would be to give speculative damages—to give damages when we cannot be certain that the plaintiff would not just as much have suffered if the goods had arrived in time; and I think, according to the principles on which the Courts have acted in all speculative and uncertain cases of this kind, that damages ought not to be recovered." Judgment of Mellish, L. J., in *The Parana.*

loss of market: Held unanimously, reversing the decision of Sir Robert Phillimore, that where through the negligence of the shipowner goods carried by him are not delivered within a reasonable time, the cargo-owner or assignee of bill of lading is not entitled to recover as damages the difference between the market value when the goods ought to have arrived and that when they did actually arrive, the measure of damage recoverable in such cases is interest at the ordinary commercial rate on the value of the goods for the period of the delay in delivery. *The Parana* (Court of Appeal, March 9 and 27, 1877, James, Mellish, and Baggallay, L. JJ.). *Refer* pp. 16, 39.

master's letters to owners. *See* "Evidence."

not accountable for leakage: Held, that the clause "not

Cargo Claims—*continued.*

accountable for leakage" in a bill of lading exempts the shipowner only from loss to the leaky package, not from damage done to other packages by the liquid escaping. *Thrift* v. *Youle* (Common Pleas, Feb. 6, 1876, Grove and Denman, JJ.). *Refer* p. 41.

presumptive negligence: Held unanimously, that the Court will not set aside the finding of a jury that goods were damaged by the negligence of persons on board the ship, as a finding against the weight of evidence, where a number of facts are in evidence which together support the presumption that the goods were so damaged, as where bales of fine goods are found spotted with grease and dirt after delivery by a lighterman, who had not noticed such spots when the goods were delivered to him by the ship, it being proved, however, that two donkey engines using oil and giving off steam were at work in the neighbourhood of the goods when they were being discharged. *Czech* v. *General Steam Navigation Co.* (Common Pleas, Nov. 9, 1867, Bovill, C. J., Willes, Byles, and Keating, JJ.).

proceeding in a damaged state: Held, affirming the decision of the City of London Court, that if a vessel after she has started on her voyage, strand and receive damage, it is the duty of the master to take steps to have the damage repaired before proceeding on the voyage, and if he proceed without repairs, and with his decks and waterways admitting water, and the cargo becomes as a consequence damaged, his owners are liable to make good such damage. *The Rona* (Admiralty, May 5, 1884, Sir James Hannen and Field, J., assisted by Trinity Masters). *Refer* p. 42.

re-stowage: Held, reversing the decision of a consular court, that the re-stowage of a cargo in order to trim vessel, after discharge of part cargo, is an act of "management or navigation," and as the bills of lading specially except any act, neglect, or default whatsoever of pilot, master, or crew, damage to cargo resulting from such re-stowage does not entitle the owners to recover from the shipowner. *The Paumben* (Shanghai

Cargo Claims—*continued.*

Supreme Court, Jan. 29, 1887, Sir R. J. Rennie, Kt., C. J.).

salt-water damage to cargo: Held, that damage to cargo by salt water does not come within the excepted perils when by reason of the place or manner in which it is stowed it is exceptionally liable to such damage in severe weather; as, for instance, when insufficient dunnage is provided or cargo stowed under the floor of the forepeak underneath a scuttle on deck frequently opened on the passage. *The Squando* (Admiralty, Jan. 25, 26, 28, 29 and 30, 1878, Sir R. Phillimore).

salvage expenses by cargo underwriters: Held, affirming the decision of Huddleston, B., that where owing to negligent navigation a ship is cast ashore and her cargo thereby suffers damage and loss, money paid by underwriters on cargo to a salvage association, who are employed with the consent of the owners, for saving a portion of the cargo, is not a voluntary payment, and is recoverable by the cargo-owners from the shipowners, being money paid to avert a loss which would have fallen upon shipowners if the cargo had not been salved and sent on to its destination. *Scaramanga and others* v. *Martin, Marquand & Co.* (Court of Appeal, Nov. 30, 1885, Lord Esher, M. R., and Cotton and Bowen, L. JJ.).

ship action discontinued. *See* "Collision," p. 71.

stowage—dunnage—seaworthiness: Held, that the warranty as to seaworthiness in a bill of lading is that the vessel is seaworthy at the time, and reasonably likely to continue seaworthy on the intended voyage. If from peculiarities of construction she requires that special precautions be taken to preserve the cargo from sea damage, the owner is bound to take those precautions as well as to provide sufficient dunnage. *The Marathon* (Admiralty, Jan. 31, Feb. 1, 3, 5, and 11, 1879, Sir R. Phillimore and Trinity Masters).

weight, contents, and value unknown: Held unanimously, affirming the decision of Sir R. Phillimore, that a master of a vessel when he signs a bill of lading

Cargo Claims—*continued.*

stating that certain goods were "shipped in good order and condition," certifies that as far as can be seen externally the goods are then shipped in good condition, and the addition of the words "weight, contents, and value unknown," does not affect this; but if the goods arrived damaged externally and internally, the onus lies upon the shipowner to excuse himself from the damage. *The Peter der Grosse* (Court of Appeal, March 1, 1876; James and Mellish, L. JJ., Baggallay, J. A.).

Carrier

agent of consignee. *See* "Stoppage in Transit."

Cause of loss,

proximate and remote. *See* "Cargo Claims," p. 37; "Seaworthiness." *Refer* pp. 26, 29.

Cattle

dying, partly from fright, partly bad weather. *See* "Cargo Claims," p. 35.

free of mortality or jettison—unseaworthiness. *See* "Cargo Claims," p. 36.

infected with disease on board ship. *See* "Bill of Lading," p. 20.

on deck—jettison. *See* "Deck Cargo."

Causa proxima.

See "Bottomry," p. 25.

,, "Cargo Claims," p. 37.

,, "Seaworthiness," p. 213. *Refer* p. 29.

Certificate

improperly suspended. *See* "Board of Trade Inquiry."

of discharge refused—coasting trade. *See* "Seaman's Discharge Note."

Cessation

of charterer's liability—lien on cargo. *See* "Charter-party," p. 49.

Chain Cables and Anchors,

sale under Acts 1864 to 1874—test: Held, that under these Acts every contract for the sale of a chain cable implies a warranty on the part of the seller that the

Chain Cables and Anchors—*continued.*
same has been duly tested and stamped, whether the chain be for use on board a British vessel or not. *Hall* v. *Billingham and Sons* (Queen's Bench, Nov. 26, 1885, Mathew and Smith, JJ.).

Change
of owner—commencement of risk. *See* "At and From."

Changing
pilots—anchoring before docking. *See* "Compulsory Pilotage."

Charter-party,
all other conditions per. *See* "Lay Days," p. 134. *Refer* p. 49.
as near thereto as she may safely get: Held unanimously, that where the master of a vessel has proceeded to a wharf with his vessel and loaded cargo, he cannot, after finding that his vessel draws too much water to cross the bar, return to the jetty, discharge part cargo, and demand to have the same lightered to a place where he can load and proceed after loading; the charterer having had the cargo placed on board, has completed his duty. *General Steam Navigation Co.* v. *Slipper* (Common Bench, Jan. 20, 1857, Erle, C. J., Williams, Willis, and Keating, JJ.).
as near thereto as she may safely get: Held unanimously, affirming the decision of the Queen's Bench Division (Mellor and Quain, JJ., Cockburn, C. J., dissenting as to *pro ratâ* freight), that where a shipowner has chartered his vessel to carry a cargo of railway iron to Taganrog, or so near thereto, &c., and the captain on arrival at Kertch (220 miles from Taganrog) in the month of December, finding that he cannot reach Taganrog till the succeeding April, discharges his cargo into the hands of the customs authorities at Kertch, in spite of telegraphic protests from receivers of cargo at Taganrog, the shipowner has no claim for freight, either under the charter or *pro ratâ itineris*. The delivery at Kertch is not a delivery under the charter-party, the word "there" or "at the time of the ship's arrival," or some other expression to the

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Charter-party—*continued.*

like effect, cannot be incorporated into or read into the charter-party so as to qualify the words so near thereunto, &c. The captain having discharged the cargo, the consignees had the right to come and take possession thereof. *Metcalf* v. *Britannia Ironworks Co.* (Court of Appeal, April 27, 1877, Lord Coleridge, C. J., Bramwell and Brett, L. JJ.).

as near thereto as she can safely get: Held unanimously, affirming the decision of Grove, J., that if a vessel be ordered to a port which she cannot reach without lightering, the proper course to pursue is to proceed as near thereto as she can safely get, and there lighter sufficient to enable the vessel to proceed to the port of discharge; and if the charter contains a clause that cargo is to be brought to and taken from alongside, the merchant must pay the cost of lightering, and no custom of the port of discharge to the contrary effect can relieve him of this liability. *Hayton* v. *Irwin* (Court of Appeal, Dec. 3, 1879, Bramwell, Brett, and Cotton, L. JJ.). *Refer* pp. 53, 136.

as near thereto as she can safely get: Held, that where a charter-party contains a clause to discharge at a safe port or as near thereunto as she can safely get, the bills of lading have not the effect of altering the contract so made; and if the bills of lading designate a port to which the vessel cannot safely get without discharging a third of her cargo, the master is justified, in the absence of any one representing owners of cargo, in considering the voyage at an end at the point nearest to the port named in the bills of lading where the vessel can safely get, and if he after lightening sufficient cargo have his vessel towed to the port, the Court will, nevertheless, allow the owners the cost of lighterage of the whole cargo. *Capper & Co.* v. *Wallace Bros.* (Queen's Bench, Feb. 20 and 24, 1880, Lush and Manisty, JJ.).

bill of lading at less freight. *See* "Freight;" "Bill of Lading," p. 18.

cancelling clause—free of *pratique:* Held unanimously, upholding the decision of Hawkins, J., that in the case

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Charter-party—*continued.*

of a charter-party containing an option in charterer's favour of cancelling the charter, unless the vessel be at a certain port "free of *pratique*" by a certain date, where the vessel has arrived at the said port prior to the required date, but could not be made free of *pratique* in consequence of the state of the weather precluding all communication with the shore, the charterer is entitled to exercise his option of cancelling, as the excepted perils clause could not be read into the clause as to cancelling. *Smith* v. *Dent and Son* (Queen's Bench, Nov. 27, 28, 1884, Lord Coleridge, C. J., and Mathew and Smith, JJ.). *Refer* p. 53.

cargo sold free on board purchaser's ship. *See* "Stoppage in Transit."

cesser clause: Held unanimously, affirming the decision of the Queen's Bench (Mellor and Quain, JJ.), that where a charter-party gives a master of a ship a lien on cargo for freight and demurrage, and states further "all liability of charterers to cease as soon as the cargo is on board," the master cannot, after parting with his lien, bring an action for demurrage against the charterers. *Sanguinette* v. *The Pacific S. N. Co.* (Court of Appeal, Dec. 1, 1876, Mellish, L.J., Brett and Amphlett, JJ. A.).

cesser clause: Held unanimously, affirming the decision of Pollock, B., and Lopes, J., that the clause in a bill of lading, "all other conditions as per charter-party," means such conditions only as are consistent with the bill of lading, which is a contract quite distinct from that of the charter-party; that, therefore, a clause in the charter party, to the effect that charterer's liability is to cease on shipment of cargo, owners to have a lien thereupon for freight and demurrage, being inconsistent with the bill of lading, is not incorporated therein by such a clause. *Gullichsen* v. *Stewart Bros.* (Court of Appeal, Jan. 30, 31, 1884, Lord Coleridge, C. J., Brett, M. R., and Bowen, L. J.).

class withdrawn after charter effected: Held unanimously, affirming the decision of Denman, J., that where a

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Charter-party—*continued.*

vessel described in a charter-party as classed in a certain way has her class withdrawn before the loading of the cargo has commenced, it is not competent to the charterers to refuse to load her on that account, even although the withdrawal of the class may involve them in a serious loss in increased premium of insurance, the warranty being simply that she was so classed at the time the contract of affreightment was entered into, and not that she would continue to be so classed, or was rightfully so classed. *French* v. *Newgass* (Court of Appeal, Feb. 8, 1878, Bramwell, Brett, and Cotton, L. JJ.).

"dangers of navigation": Held unanimously, confirming the decision of Grantham, J., at Liverpool Assizes, that the clause, "dangers of navigation," inserted in a charter-party, includes damage done by another ship or vessel through its careless navigation, which is not covered by the clause excepting "perils of the seas" simply. *The Garston Ship Co.* v. *Hickie and others* (Court of Appeal, Oct. 28, 1886, before Lord Esher, M. R., Lindley and Lopes, L. JJ.).

draught of water: Held unanimously, upholding the decision of Dr. Lushington, that a guarantee in a charter-party that a vessel will carry a stated number of tons on a stated draught of water, applies to draught in fresh as well as salt water. *The Norway* (Privy Council, July 20, 1865, Right Hon. Knight-Bruce, J. T. Coleridge and E. V. Williams, L. JJ.).

final sailing from last port: Held unanimously, affirming the decision of Lopes, J., that where in a charter-party it is stipulated that certain freight is to become due and payable within eight days "from final sailing of the vessel from her last port in United Kingdom," it is a "final sailing" within the meaning of the clause if a vessel leave Penarth Dock and is towed seven or eight miles, and the weather being threatening is anchored, even although she subsequently part her cables, and is driven back to Penarth Beach, having never left the port of Cardiff as defined in the Gazette

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Charter-party—*continued.*

for fiscal purposes, although in the ordinary commercial sense she had been out at sea; the vessel had finally sailed as soon as she had left the port for the purpose of proceeding on her voyage without any intention of coming back, and owners were entitled to the freight in accordance with the clause. *Price* v. *Livingstone* (Court of Appeal, July 6, 1882, Jessel, M. R., Sir James Hannen and Lindley, L. J.). *Refer* p. 117.

full and complete cargo—accident intervening: Held unanimously, that where a vessel being partly laden and with lighter with cargo alongside, accidentally takes fire and is scuttled, and the master sells the part cargo on board damaged by water, and forwards that in lighter by another vessel, the charterer is bound to tender for shipment the balance of a full and complete cargo when the vessel is ready to receive it, even although the necessary repairs may have occupied over two months, nothing having occurred to discharge him from the obligation to complete the loading. *Jones* v. *Holm* (Exchequer, June 17 and 22, 1867, Bramwell, Martin, and Channell, BB.).

full and complete cargo—spare bunker space: Held, that where no usage of trade is proved to provide cargo for the spare bunkers of a steamship, the charterer is entitled to refuse to supply cargo to be laden therein, unless there be an express stipulation in the agreement or charter-party to that effect, and as a consequence no claim can be made upon the charterer by the owner for loss of freight. *The Northcote* (Glasgow, Feb., March, 1887, Sheriff Murray).

full and complete cargo, say about 1,100 tons: Held unanimously, that where in a charter-party the above words are used, and the vessel requires 1,210 tons to give her a full and complete cargo, and the charterer provides 1,080 tons only, the shipowner is entitled to claim short freight, less cost of earning same, on 55 tons, being on 20 tons short of the 1,100 tons named in charter-party, and 3 per cent. as margin. *Morris*

Charter-party—*continued.*

v. *Levison* (Common Pleas, Feb. 10, 1876, Brett, Archibald and Lindley, JJ.).

giving lien where there is no bill of lading—general ship. *See* "Lien," and p. 41.

liberty to tow vessels in distress. *See* "Cargo Claims," p. 40, and p. 105.

managing owner's authority to effect. *See* "Mortgage."

master's authority to instruct broker to charter. *See* "Master's Agency."

meaning of word "port." *See* "Limits of Port."

mortgagee taking possession after charter. *See* "Mortgage."

necessity of stipulation as to towing vessels in distress. *See* "Cargo Claims," p. 40. *Refer* p. 105.

"now at Amsterdam": Held unanimously, reversing a decision of Cockburn, C. J., Mellor and Crompton, JJ., Wightman, J., dissenting, that where an owner in effecting a charter-party describes his vessel as at a certain port, when, as a matter of fact, she has not arrived within the limits of the port, the statement that she is at the port is a substantive part of the contract, the breach of which entitles the charterer to repudiate the contract. *Behn* v. *Burness* (Exchequer, Nov. 26, 1862, and Feb. 24, 1863, Erle, C. J., Pollock, C. B., Williams and Keating, JJ., and Channell, B.).

printed and written clauses: Held, that where in a charter-party printed and written clauses contradict each other, the written words work an exception to the printed clauses. *Scrutton* v. *Childs* (Queen's Bench, Jan. 19, 1877, Mellor and Lush, JJ.).

shore to ship at ship's risk: Held unanimously, confirming the decision of Grantham, J., at the Liverpool Assizes, that a clause in a charter-party, to the effect that the cargo is to be "brought alongside at the ship's risk," means that the shipowner is to take the goods during transit from shore to ship at the same risk as if they were on board; that the exception in the charter-party of "perils of the seas" applies to the whole voyage and every part of it, and that consequently an owner of cargo cannot recover for loss in transit from shore to ship in consequence of the said perils. *Nottebohm* v. *Richter* (Court of Appeal, Oct. 30, 1886, Lord Esher, M. R., Lopes and Lindley, L. JJ.).

short delivery: Held unanimously, affirming the decision

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Charter-party—*continued.*

of Cave, J., and a special jury, that a bill of lading is *primâ facie* evidence, but not conclusive evidence, of the amount of goods shipped; under ordinary circumstances the shipowner may show that a less amount of goods has in truth been shipped than appeared from the bill of lading; but a clause in the charter-party stating that the bills of lading shall be conclusive evidence as to the amount shipped binds the shipowner to deliver in accordance therewith or pay for all short delivery. *Lishman* v. *Christie* (Court of Appeal, June 23, 1887, Lord Esher, M. R., Lindley and Lopes, L. JJ.). *Refer* pp. 20, 21, 216.

stamped and unstamped: Held, that whilst a charter-party first executed abroad and not being duly stamped must be stamped ten days after it has been received within the United Kingdom, by an adhesive stamp placed upon it before it has been executed by anyone in the United Kingdom, in the case of a charter-party wholly executed abroad it may be stamped with an impressed stamp within two months of its receipt in the United Kingdom, and so legalized that it may be sued upon. *The Belfort* (Admiralty, Aug. 4, 1884, Sir James Hannen and Butt, J.).

ten days after final sailing. *See* "Freight Advanced."

time charter—general ship. *See* "Lien."

tow vessels in distress—necessity of clause giving permission. *See* "Cargo Claims," p. 40, and p. 105.

unknown to shippers—bill of lading. *See* "Cargo Claims," p. 41.

war cancellation clause—freight insurance: Held, Lush, J., dissenting, that where a charter-party provides that in the event of war, blockade, or prohibition of export preventing loading, "this charter to be cancelled," it is *ipso facto* put an end to by the happening of any of the contingencies mentioned; and the consequent loss of freight is not a loss within the meaning of a policy of insurance on "owner's freight at risk on board the ship, or chartered when in ballast." *Adamson and another* v. *Newcastle SS. Freight Insurance Association* (Queen's Bench, June 18 and 20, 1879, Cockburn, C. J., Lush and Manisty, JJ.).

where vessel can always lie and discharge afloat—nearest safe port: Held unanimously, reversing the decision of Sir R. Phillimore, that where by charter-party a vessel is to call for orders for a safe port, "or so near

Cha.

Charter-party—*continued.*

thereunto as she can safely get and always lie and discharge afloat," she is entitled to be ordered to a port which she can enter loaded, and in which she can always lie and discharge afloat at all times of the tide; and if she be ordered to a port in which she cannot do so, she is not bound to proceed to the outside of the port and there lighten, even if a custom to that effect be urged, but may proceed to the nearest safe port to the said port and there discharge. *The Alhambra* (Court of Appeal, March 25, 1881, James, Brett and Cotton, L. JJ.). *Refer* pp. 47, 48, 136.

Chartered Freight.

See also "Freight."

at and from—inception of risk: Held unanimously, affirming the decision of Bovill, C. J., that the risk under a policy of insurance on chartered freight "at and from" attaches while the vessel is at the place named, even although the discharge of inward cargo and earning of inward freight, not the freight covered by the policy, may not have been completed, and that, if the vessel be lost during such discharge, the underwriters on chartered freight to be earned subsequent to such discharge are liable, as the risk upon the same may commence earlier than the beginning of the voyage upon which the freight is to be earned, whatever be the language of the policy. *Foley* v. *United Fire and Marine Ins. Co.* (Exchequer, Feb. 7, 1870, Kelly, C. B., Martin, B., Mellor, Lush, and Hannen, JJ., and Cleasby, B.).

cancelling date—optional or absolute—concealment: Held, that if an owner effect an insurance on chartered freight, he is bound to disclose to the underwriter the fact that his charter-party contains a clause as to cancelment, such clause being sometimes inserted and sometimes not, and the risk enormously increased by its insertion. If, however, the cancelment is in the option of the charterers and not absolute upon non-arrival, it does not then concern the underwriter, as if a loss

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Chartered Freight—*continued.*

ensues it is in consequence of the charterers exercising their option, and not because of perils insured against. *The Mercantile S.S. Co., Limited* v. *Tyser* (Queen's Bench, May 21, 1881, Lord Coleridge, C. J.).

loss of hire—repairs postponed: Held, affirming the decision of Grove, Manisty, and Lopes, JJ., that if an accident happen during the continuance of a time policy on chartered freight, which, because the vessel is able to proceed on her voyage, does not cause any loss of hire during the currency of the policy, the repairs not being undertaken until after the lapse thereof, underwriters are not liable for the subsequent loss of hire the owners suffer while the repairs are being effected. *Hough* v. *Head* (Court of Appeal, Nov. 30, 1885, Lord Esher, M. R., and Cotton and Bowen, L. JJ.).

special terms of charter—mulct of hire if becoming inefficient — freight outstanding: Held unanimously, affirming the judgment of the Court of Appeal (Lord Coleridge, C. J., and Baggallay and Bramwell, L. JJ.), which reversed a judgment of Brett, L. J., that, although in the case of an ordinary time policy upon freight outstanding, the underwriters must be taken to have notice of the existence of a contract of affreightment, that cannot extend the liability of the underwriter to anything not covered by the terms of his policy; and accordingly, where in a Government time charter it was stipulated that if the vessel became inefficient the charterers could make "abatement by way of mulct out of the hire or freight," and the ship was rendered temporarily inefficient by reason of the perils of the sea, and the charterers exercised their power of mulct, inasmuch as the loss of hire was not directly caused by the perils of the sea, but by the action of the charterers, the underwriters of an ordinary time policy "on freight outstanding" are not liable as for a loss by perils insured against. In order to make underwriters liable, the clause as to cancelment should have clearly connected the cancelment with the perils of the

Chartered Freight—*continued.*

sea. *Inman SS. Co.* v. *Bischoff* (House of Lords, July 11, 14, and 15, and Aug. 1, 1882, Lord Chancellor Selborne, Lords Blackburn, Watson, and Fitzgerald).

total loss—abandonment—discharge of outward cargo: Held, Martin, B., dissenting, affirming the decision of the Court of Exchequer, Cleasby, B., dissenting, reversing a previous judgment of the Court of Common Pleas, that in the case of an insurance outwards only, on chartered freight homewards, where a vessel sustains damage on the outward passage, which is not found to amount to a constructive total loss of ship until several months after the expiry of the policies of insurance outwards, in consequence of there being no dock at port of outward discharge, underwriters on such policies must pay a total loss, even although it should be proved that the charterer was insolvent and unable to give freight to the ship, and that such underwriters are not entitled to notice of abandonment, as there can be nothing to abandon, and the absence of such notice does not consequently prejudice their interests in any way: *Rankin* v. *Potter* (House of Lords, June 28, July 1, 4 and 5, 1872, Feb. 24, and May 5, 1873, Brett, Mellor, and Blackburn, L. JJ., Bramwell and Martin, BB., Lords Chelmsford, Colonsay and Hatherley).

Chartered Government Transport

as salvor. *See* "Salvage," p. 198.

Charterers

and shipowners, the bill of lading contract. *See* "Cargo Claims."

insuring for shipowner, confirmation after loss. *See* "Freight."

to pay crew, allotment note. *See* "Seaman's Wages."

Claim,

deduction from, for unpaid premium. *See* "Premium."

part withdrawn at reference. *See* "Collision," p. 68.

Classification,

repairs enabling vessel to pass survey. *See* "Collision," p. 70.

withdrawn after charter effected. *See* "Charter-party."

Clauses,
general rule of construction. *See* "Special Clauses."
printed and written. *See* "Charter-party," p. 52.

Close hauled,
and hove-to forereaching. *See* "Collision," p. 62.

Clyde
pilotage board. *See* "Collision," p. 74.

Coaling
in pilotage district. *See* "Compulsory Pilotage."
port—bunkers. *See* "Light Dues."

Collection
of general average, underwriter liable to owner. *See* "General Average."

Collision,
assistance to disabled vessel: Held, that the duty to render assistance under sect. 16 of the Merchant Shipping Act, 1873, is not confined to rendering actual assistance, but if a vessel whose duty it is to render assistance is so injured that the only assistance she can render is to burn rockets, or hoist a globe light so as to indicate her position, she is bound to do so, and in default of so doing, she is, in the absence of proof to the contrary, to blame for the collision. *The Emmy Haase* (Admiralty, March 10, 1884, Butt, J., assisted by Trinity Masters).
bail-bond, liability of co-owners. *See* "Co-ownership."
both vessels belonging to same owner—underwriters' claim: Held unanimously, reversing the decision of the First Division of the Court of Session in Scotland (the Lord President Inglis, Lords Deas and Mure), that where two vessels belonging to the same owner come into collision, and one is totally lost through the fault of the other, and the owner limits his liability in respect of the latter and collects a total loss upon the former, the underwriters who have paid the said total loss cannot claim upon the sum paid into Court, as their rights are limited to the rights which the owner possessed before the total loss was paid, and the owner being himself the person who caused the damage he has no claim. *Simpson* v. *Thomson* (House

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Collision—*continued.*

of Lords, Nov. 6 and Dec. 13, 1877, Lord Chancellor Cairns, Lords Penzance, Blackburn, and Gordon).

both vessels to blame: Held unanimously, that where in an action for collision both vessels are found to blame, but one of such vessels is exempt from liability on the ground of compulsory pilotage, the rule of the Admiralty Court entitles the latter vessel to recover half her damages, and the former vessel, not being entitled to recover anything, cannot limit the payment to the difference between half her damage and half the damage of the other vessel. *The Hector* (Court of Appeal, March 8, 9, 10, and May 12, 1883, Brett, M. R., and Cotton and Bowen, L. JJ.). *Refer* p. 65.

both vessels to blame, cargo-owners' claim. *See* "Cargo-Claims," p. 38.

Cardiff drain: Held unanimously, affirming the decision of Butt, J., that Art. 16 of the Regulations for Preventing Collisions at Sea, directing that if two steamships are crossing so as to involve risk of collision the ship which has the other on her starboard side shall keep out of the way of the other, applies in a narrow channel where it is the duty of steamships to keep to that side of mid-channel which lies on their starboard side; hence, where a steamship going up Cardiff drain sees a vessel on her starboard side coming down the channel from Roath basin, it is her duty to keep out of the way of the other, and the outcoming vessel must keep her course; if she ports to get on to the starboard side of the channel she is to blame for breach of Art. 22 of the Regulations. *The Leverington* (Court of Appeal, June 4, 1886, Lord Chancellor Herschell, Lord Esher, M. R., and Fry, L. J., assisted by Nautical Assessors).

courses crossing—stop and reverse: Held unanimously, reversing the decision of Butt, J., that when two steamships are on courses crossing one another at right angles, and those on board one steamer see the other, and noticing that those on board of her are taking no steps to avoid a collision, whistle and ease their engines,

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Collision—*continued.*

and when within 300 yards stop and reverse full speed astern, in spite of which the steamers come into collision, those on board the first-named steamer are guilty of contributory negligence, as they ought, under Art. 18 of the Regulations for Preventing Collisions at Sea, to have stopped and reversed sooner, so as to avoid risk of collision. *The Beryl* (Court of Appeal, Jan. 17 and 18, 1884, Brett, M. R., and Bowen and Fry, L. JJ., assisted by Nautical Assessors).

damage to one, both to blame: Held unanimously, reversing the decision of Sir R. Phillimore, that where those on board a vessel by their negligence are the cause of a collision, which would not have resulted in damage to either vessel but for the negligence of those on board the vessel not to blame for the collision—as where an anchor is improperly carried where it ought not to be—the first-named vessel is entitled to recover half her damages according to the practice of the Admiralty Division. *The Margaret* (Court of Appeal, March 14, 1881, James, Brett, and Cotton, L. JJ.).

damage revealing rotten wood: Held, that where a ship is damaged by collision, and on opening her to effect the necessary repairs certain parts of her not injured by the collision are found to be rotten and to require renewing, the cost of such renewal cannot be charged to the collision damage, although but for such opening they would have lasted for some years. *The Princess* (Admiralty, May 5, 1885, Sir James Hannen and Butt, J.).

dangers of navigation, other vessel to blame. *See* "Charter-party," p. 50.

delay, demurrage. *See* "Tug and Tow."

definition in French Court—sunken wreck: Held, that the exclusive judicial meaning of the word "collision" admitted by the law Courts is the contact of two vessels in a state of navigability, and that the striking of a vessel against a sunken wreck is not a collision. *The Basse Indre* (Nantes Tribunal of Commerce, Sept. 1887).

Col.

Collision—*continued.*

double action in Ireland and England: Held, that where a plaintiff in a damage action has taken proceedings first in Ireland and subsequently in England, he will not be allowed to proceed with the action in England until he has abandoned proceedings in Ireland. It is not sufficient that he is desirous of abandoning the action first commenced, and that he is not allowed to do so by the Irish Court; such refusal should be corrected by appeal. *The Catharina Chiazzaro* (Admiralty, March 21 and April 4, 1876, Sir R. Phillimore).

double proceedings at home and abroad: Held, that where in a damage action it appeared that the defendants had, prior to the institution of the action in the High Court, instituted proceedings against the plaintiffs to recover damages in respect of the same collision in a Vice-Admiralty Court near to the place where the collision occurred, the Court will stay all further proceedings in the High Court until after the Vice-Admiralty action has been heard. *The Peshawur* (Admiralty, Feb. 6, 1883, Sir Robert Phillimore).

double proceedings at home and abroad: Held unanimously, affirming the decision of Bacon, V. C., that although a plaintiff may be put to his election between two actions, one in an English Court and the other abroad, on the ground of vexation, the Court will not consider the double litigation vexatious, where there are substantial reasons to induce the plaintiff to sue in both countries, as, for instance, where he can get a judgment in each action, but execution is more easily obtained in one country than in the other. *Peruvian Guano Co., Limited* v. *Bockwoldt* (Court of Appeal, Feb. 14 and 16, 1883, Jessel, M. R., and Lindley and Bowen, L. JJ.).

double proceedings at home and abroad: Held, affirming the decision of Sir James Hannen, Brett, M. R., dissenting, that where a collision action was instituted in Holland, and a letter of guarantee tendered and accepted releasing vessel, and the plaintiffs subsequently instituted a second action in this country and

Col.

Collision—*continued.*

re-arrested the vessel, the Court of Admiralty has power to stay the second action and release the vessel, and ought to exercise that power, without giving the plaintiffs the choice of electing which action they will proceed with. *The Christiansborg* (Court of Appeal, July 18 and 21, 1885, Brett, M. R., and Baggallay and Fry, L. JJ.).

[NOTE.—Subsequently to this decision the plaintiffs entirely abandoned proceedings in Holland, and instituted fresh proceedings in this country, which were ultimately settled by the defendants paying the plaintiffs' claims.]

entering River Tyne: Held unanimously, confirming the decision of Butt, J., that a vessel entering the Tyne is bound, under bye-law 20 for the Regulation of the River Tyne, to get on to a course to enable her to enter on the north side when at some considerable distance outside the pier-heads; and if she crosses from south to north of mid-channel, when close up to the pier-heads, she thereby infringes the bye-law. *The Harvest* (Court of Appeal, June 3, 1886, Lord Chancellor Herschell, Lord Esher, M. R., and Fry, L. J.).

error of judgment not contributory negligence: Held unanimously, reversing the decision of Sir R. Phillimore, that where a ship has by improper navigation rendered a collision imminent, and executes wrong manœuvres when close to another vessel, such other vessel will not be held guilty of contributory negligence if the master, under the pressure of extreme peril, executes or orders a manœuvre which was not the right one under the circumstances; the Court ought not to require perfect nerve and presence of mind and the doing of the best thing possible in such cases. *The Bywell Castle* (Court of Appeal, July 14 and 15, 1879, James, Brett and Cotton, L. JJ., with Nautical Assessors).

flare-up light: Held, that the burning of a flare-up light by vessels other than overtaken and fishing

Col.

Collision—*continued.*

vessels is not forbidden by Article 2 of the Regulations for Preventing Collisions at Sea, though blame may be attributable to a vessel exhibiting a flare if the exhibition is misleading and contributes to a collision. *The Merchant Prince* (Admiralty, July 17 and 18, 1885, Sir James Hannen, assisted by Trinity Masters).

fog obscuring side lights, but not mast-head light: Held unanimously, affirming the decision of the Court of Appeal (James, Brett, and Cotton, L. JJ.), reversing a prior decision of Sir Robert Phillimore and Trinity Masters, that it is the duty of a vessel when in the vicinity of a fog-bank, even although not herself actually therein, to make the signals prescribed by Article 10 of the Regulations for Preventing Collisions at Sea, so as to warn vessels within it of her presence. When at night a mast-head light is seen, but no side lights, it is an indication to an approaching vessel that the light is that of a steamer whose side lights are obscured by fog. *The Milanese* (House of Lords, May 6, 9, 10, and June 14, 1881, Lord Chancellor Selborne, Lords Blackburn and Watson).

foreign government mail packet: Held unanimously, reversing a decision of Sir R. Phillimore, that an armed vessel belonging to a foreign sovereign state, and employed in what is considered by that state to be a national service, is entitled to the privilege of a vessel of war, as to freedom from arrest in a suit *in rem*. *The Parlement Belge* (Court of Appeal, Dec. 11, 12, 20, 1879, and Feb. 27, 1880, James, Baggallay, and Brett, L. JJ.).

general maritime law: Held, that where a collision takes place on the high seas between a British and a Spanish ship, the owners of the latter, having offices in England, cannot plead that by Spanish law there is no personal liability, as such cases are governed by general maritime law, and not by Spanish law. *The Leon* (Admiralty, May 10 and 11, 1881, Sir R. Phillimore).

hove-to and close-hauled: Held, that where a vessel hove-to

Col.

Collision—*continued.*

with her tiller lashed a-lee forereaching one and a-half knots an hour is crossing another vessel close-hauled, and a collision occurs, the first-named vessel is to blame, for not keeping out of the way under Article 12 of the Regulations; but the second vessel is also to blame if she sees, or ought to see, that the first-named vessel is not taking steps to keep out of the way, and herself does not take any steps in her power to avoid a collision. *The Rosalie* (Admiralty, July 28, 1880, Sir R. Phillimore and Trinity Masters).

in dock on arriving. *See* "Compulsory Pilotage."

inevitable accident: Held, that where a vessel having her riding light burning breaks adrift from her anchors in bad weather, and after bumping over sands for the greater part of an hour and a-half, at the end of that time collides with a vessel at anchor and does her serious injury, the accident is unavoidable; and the fact that the first-named vessel had not side lights burning, or the three red lights prescribed by Article 5 of the Regulations for Preventing Collisions at Sea, does not render her liable under the circumstances, their absence not having possibly contributed to the collision. *The Buckhurst* (Admiralty, March 24, 1881, Sir R. Phillimore and Trinity Masters).

inevitable accident—latent defect in machine: Held, that where the steering gear of a steamer breaks down through latent defect, not to be detected by any means, and a collision ensues, if it be proved that the machine was thoroughly good in every respect when it was put up in the vessel in the proper manner, and that every care had been exercised to so maintain it, the steamer will not be held to blame for the collision, which must be ascribed to inevitable accident. *The Virgo* (Admiralty, Nov. 6, 11, and 17, 1876, Sir R. Phillimore).

infringement of regulations for preventing collisions: Held unanimously, affirming the decision of Sir Robert Phillimore, that departure from the Regulations for Preventing Collisions at Sea is justifiable under Article 23, when such departure is the only chance

Col.

Collision—*continued.*

left of avoiding a collision, and is in fact the best manœuvre under the circumstances, as when a steamship, being misled as to the position of an approaching vessel by faulty lights, until a collision is well-nigh inevitable, continues to steam full speed ahead with helm hard over, on the chance of clearing the approaching ship. *The Benares* (Court of Appeal, Dec. 3, 1883, Brett, M. R., Baggallay and Bowen, L. JJ., assisted by Nautical Assessors). *Refer* p. 66.

infringing regulations, yet not at fault: Held, that a vessel, though infringing the Regulations for Preventing Collisions at Sea, will not be "deemed to be in fault" for a collision caused exclusively by the negligence of the other vessel, providing such infringement of the regulations could not under the circumstances have contributed to the collision. *The Englishman* (Admiralty, Nov. 12 and 13, 1877, Sir R. Phillimore).

inspection by Trinity Masters: Held, that in a collision action the Court will not order the vessel or vessels to be examined by the Trinity Masters prior to the hearing of the action, except under exceptional circumstances, and especially not where the party applying has had the opportunity by his witnesses of inspection himself. *The Victor Covacevich* (Admiralty, Feb. 17, 1885, Butt, J.).

interest to be added to limit of 8*l.* per ton. *See* "Limitation of Liability," p. 149.

launch (unregistered) not a ship. *See* "Limitation of Liability," p. 149.

launch of vessel: Held, that if due notice be given that a launch is about to take place, and a vessel anchored in the way of the vessel to be launched is duly warned to shift her position, and obstinately refuses to exercise due diligence in so doing, and in consequence is run into and sunk by the launch, she (the anchored vessel) will be held solely to blame for the accident. *The Cachapool* (Admiralty, Nov. 4, 5, and 9, 1881, Sir R. Phillimore and Trinity Masters).

launch of vessel: Held, repeating the judgment given

Col.

Collision—*continued.*

in the case of *The Andalusian* (2 P. Div. 231), that the law throws upon those who launch a vessel the obligation of doing so with the utmost precaution, and giving such a notice as is reasonable and sufficient to prevent any injury happening from the launch; and, moreover, the burden of showing that every reasonable precaution has been taken, and every reasonable notice given, lies upon those managing the launch. *The George Roper* (Admiralty, April 27, 1883, Butt, J.).

limited and non-limited vessel. *See* "Limitation of Liability."

limitation of liability: Held, reversing the decision of Jessel, M. R., Brett, L. J., dissenting, that in a collision case in which both vessels have been found to blame, if the owner of one of the vessels claims to limit his liability to 8*l.* per ton, he is still entitled to recover the half of his damage, and the claim must be for the whole moiety of the damage sustained by each ship. *Chapman* v. *Royal Netherland S. N. Co.* (Court of Appeal, Nov. 6, 1878, and March 22, 1879, Baggallay, Brett and Cotton, L. JJ.). *Refer* p. 149.

limitation of liability—double collision: Held, that where a ship comes into collision with two vessels one after the other, there being a short interval between the two collisions, the shipowner will be entitled to limitation of liability if the first collision is the substantial and efficacious cause of the second, and there is no separate act of negligence on the part of the colliding ship in respect of the second collision. *The Creadon* (Admiralty, April 8, 1885, Butt, J.).

log-book signed two days after event. *See* "Log-book."

loss of life—all claims settled. *See* "Limitation of Liability."

master part-owner. *See* "Limitation of Liability."

master undertaking to pay, he being in fault: Held unanimously, that where a ship through the default of the master has damaged another ship, and the master of the former has given a bond to the latter for the amount of the damage, binding himself and his owners

Col.

Collision—*continued.*

and the ship, he, being a wrongdoer, cannot, in an action for wages and disbursements, claim the amount on such bond or to be indemnified against claims made upon him thereunder. *The Limerick* (Court of Appeal, May 3, 1876, James, L. J., Baggallay, J. A., Lush, J.).

moderate speed—open sea and crowded waters: Held unanimously, affirming the decision of Sir R. Phillimore, that the expression "moderate speed" in the 13th Article of the Regulations for Preventing Collisions at Sea, means "moderate speed" for the position in which the vessel happens to be; that, for instance, a sailing vessel under all plain sail, making five knots an hour, out in the Atlantic Ocean in a fog, was not exceeding a moderate speed, although she might be doing so if going at the same speed with less spread of canvas in more frequented waters. *The Elysia* (Court of Appeal, June 19, 1882, Lord Coleridge, C. J., and Brett and Cotton, L. JJ., assisted by Nautical Assessors).

not a danger or accident of the seas or navigation. *See* "Cargo Claims," pp. 35, 38. *Refer* pp. 50, 69.

not a peril of the sea. *See* "Cargo Claims," pp. 37, 38.

obligation to stop engines: Held, that it is the duty of a steamship to stop her engines when she observes a manœuvre on the part of an approaching vessel involving risk of collision, and her failure so to do will cause her to be held to have contributed to the collision if one takes place. It is not sufficient that she reduce her speed, she must stop her engines. *The Fitzjames* v. *The Agnes Otto* (Admiralty, Jan. 18 and 19, 1887, Butt, J., assisted by Trinity Masters).

obligation to stop and reverse: Held unanimously, reversing the decision of the Court of Appeal (James, Brett and Cotton, L. JJ.), and re-instating the decision of Sir R. Phillimore, that, where a wrong manœuvre on the part of one of two approaching steamships makes a collision inevitable, the other will be held to have contributed to the collision, unless the master at once gives the order to stop and reverse the engines

Col.

Collision—*continued.*

in accordance with Art. 16 of the Regulations for Preventing Collisions at Sea, and sect. 17 of the Merchant Shipping Act, 1873; and that, where a master simply gives the order to port the helm hard over, and for the engineers to stand-by the engines, with the object of easing the blow by avoiding striking the other vessel stem on, he has not complied with the regulations, and has not shown any sufficient necessity for departure from them. *The Stoormvart Maatschappy Nederland* v. *The Peninsular & Oriental Co.* (House of Lords, June 29, July 1, 2 and 23, 1880, Lords Hatherley, Blackburn and Watson).

onus of proof of absence of negligence: Held unanimously, reversing a decision of Butt, J., that where it is shown in a collision action that one of the vessels was properly at anchor with her anchor light burning, the fact of a collision with her is *primâ facie* evidence of negligence on the part of the ship in motion, and the *onus* is upon the latter to prove that the collision was not occasioned by her negligence. *The Annot Lyle* (Court of Appeal, June 3 and 9, 1886, Lord Chancellor Herschell, Lord Esher, M. R., and Fry, L. J.).

other vessel to blame—excepted perils. *See* "Discharge of Cargo."

overtaken vessel: Held unanimously, reversing the decision of Sir James Hannen, that if two ships are in such a position, on such a course and at such a distance, that, if it were night, the hinder ship could not see any portion of the side lights of the forward ship, the hinder of two such ships, if going faster than the other, is an overtaking ship, and the other a "ship which is being overtaken by another" within the meaning of Art. 11 of the Regulations for preventing Collisions at Sea, and even though the hinder ship broadens on her quarter she is bound to show a stern light in sufficient time to enable the other, by the exercise of reasonable precautions, to avoid risk of collision. *The Main* (Court of Appeal, June 1 and 2, 1886, Lord Chancellor

Col.

Collision—*continued.*

Herschell, Lord Esher, M. R., and Fry, L. J., assisted by Nautical Assessors).

overtaken vessel: Held unanimously, affirming the decision of Sir Robert Phillimore, that, although it is the duty of an overtaken ship, if she sees a vessel which she has reason to suppose does not see her, and which is likely to come into collision with her, to give some warning to the overtaking ship, not necessarily by exhibiting a light, but by some signal, such as the firing of a gun, the showing a light, or otherwise; still, where a steamer, going at a high rate of speed in a fair-way, overtakes a sailing ship showing no light or signal, the steamer will be held alone to blame if a lower rate of speed would have given her time to have avoided the collision upon sighting the sailing ship. *The Earl Spencer* (Privy Council, June 17, 1875, Sir James W. Colvill, Sir Barnes Peacock, Sir Montague Smith and Sir Robert P. Collier).

overtaken vessel: Held, that a vessel is not bound by Art. XI. of the Regulations for Preventing Collisions at Sea to show from her stern a white light, or a flare-up light to a vessel overtaking her, unless there is danger of the overtaking vessel not passing clear. *The Reiher* (Admiralty, July 29, 1881, Sir R. Phillimore and Trinity Masters). *Refer* p. 67.

overtaking and crossing ship: Held, that where one of two ships is at the same time crossing and overtaking the other, Art. XX. of the Regulations for Preventing Collisions at Sea, 1880, applies so as to make it the duty of those on board to keep out of the way, notwithstanding the rule as to crossing ships, which in such cases does not apply. *The Seaton* (Admiralty, Nov. 2, 1883, Butt, J., assisted by Trinity Masters).

part claim withdrawn at the reference—costs: Held, that where a plaintiff in a collision action withdraws a part of his claim at the reference, and not before, and the amount awarded is less than two-thirds of the amount originally claimed, although more than two-thirds of the claim thereby reduced, the original

Col.

Collision—*continued.*

amount of the claim is the amount upon which costs are to be given, and he is not entitled to his costs. *The Eilean Dubh* (Admiralty, Nov. 6, 1883, Sir James Hannen).

peril of the sea: Held unanimously, affirming a decision of Sir James Hannen, that a collision is not necessarily a peril of the sea within the meaning of those words in a bill of lading, and that, therefore, in an action by an owner of goods against a shipowner, it is no defence to prove that the loss has been caused by a collision, and the plaintiffs are entitled to judgment without being called upon to prove that the collision was the result of the defendant's negligence. *The Xanthe* (Court of Appeal, June 7 and 8, 1886, Lord Esher, M. R., Bowen and Fry, L. JJ.). *Refer* p. 37.

perishable cargo—duty to forward. *See* "Cargo Claims," p. 40.

Preliminary Act—questions improperly answered: Held, that the answer, "The ——— when first seen was at anchor," is an improper answer to Art. IX. of the Preliminary Act, inquiring the "distance and bearing of the other vessel when first seen," and that the Court will always be disposed to view with suspicion the case of the party so answering, even though it appears to be accidental, and if it proves to be intentional, will approach their case with the gravest suspicion. *The Godiva* (Admiralty, Jan. 27 and 28, 1886, Butt, J., assisted by Trinity Masters). *Refer* p. 132.

recovering more than policy value. *See* "Value in Policy."

reference to registrar—costs: Held, that in cases of collision, where both vessels are found to blame, and the amount of damage is referred to the registrar, and less than one-fourth is struck off, both the claim and counter-claim, the costs of substantiating the plaintiff's claim at the reference will be borne by the defendants, and the costs of substantiating the defendant's claim by the plaintiffs. *The Mary* (Admiralty, May 23, 1882, Sir R. J. Phillimore).

Col.

Collision—*continued.*

repairs advantaging owners: Held, that it cannot be urged that because the doing of repairs, which have been rendered necessary by a collision, procures an advantage to the owner of the damaged property, therefore the amount which the wrongdoer has to pay should be proportionately reduced. If a vessel having been sunk by collision and refloated is painted inside, and if, in order that the vessel might be used again in the ordinary course of business, painting was necessary, then the fact that it enabled the vessel to pass her survey is not to be taken into account by way of diminution; if, however, all that was required to make her fit to receive cargo was that the mud should be removed and she thoroughly washed out, then all her owner would be entitled to would be the cost of washing and cleansing. *The Bernina* (Admiralty, Dec. 7 and 26, 1886, Sir James Hannen). *Refer* p. 59.

sailing ship in fog: Held, that in the case of a collision between a steamer and a sailing vessel, where it was proved that the steamer was going dead slow with only sufficient way on her to keep her in command, and that the sailing vessel might have been under command with less canvas, the sailing vessel was solely to blame. *The Beta; The Peter Graham* (Court of Appeal, June 18, 1884, Brett, M. R., and Bowen and Fry, L. JJ., assisted by Nautical Assessors).

sale of foreign ship—default action: Held, that to obtain an order for the sale of a foreign ship it is necessary to produce proof that no appearance has been entered in the action in behalf of the ship, in addition to the report of the marshal alleging that it is desirable that the ship be sold. *The Hercules* (Admiralty, Dec. 4, 1885, Butt, J.).

sale of ship—seamen's claim to proceeds. *See* "Lien."

salvage to one—both to blame—both liable. *See* "Salvage," p. 199.

same ownery. *See* "Cargo Claims," p. 36. *Refer* p. 57.

seaman's representatives claiming: Held unanimously, reversing the decision of Butt, J., that the relatives of

Col.

Collision—*continued.*

seamen can proceed, under Lord Campbell's Act, to recover damages for loss of life in a case of collision where both vessels have been held to blame, against the vessel in which they were not employed, providing the deceased were not guilty of negligence which was partly directly a cause of the injury. *The Bernina* (Court of Appeal, Jan. 24, 1887, Brett, M. R., Lindley and Lopes, L. JJ.).

ship—unregistered launch. *See* "Limitation of Liability."

ship—barge. *See* "Barge not propelled by oars."

ship action judgment by consent—cargo action: Held unanimously, affirming the decision of Butt, J., that where owners of a ship institute proceedings against the owners of another ship, the owners of which counterclaim, and judgment is by consent of the parties given dismissing the action and the claim and counterclaim, and owners of cargo in the plaintiffs' vessel obtain a judgment of both vessels to blame, whereupon the defendants institute an action for limitation of liability, the judgment in the ship action cannot be set aside by agreement between the two parties thereto by an order of the registrar, so as to enable the plaintiffs in the ship action to claim in the limitation action, that it is doubtful whether the Court even ought to set aside the judgment by consent, if the whole of the facts and all the parties affected were brought before it. *The Bellcairn* (Court of Appeal, Aug. 11 and Nov. 4, 1885, Lord Esher, M. R., and Cotton and Lindley, L. JJ.).

ship action discontinued by agreement—cargo action: Held unanimously, affirming the decision of Lord Coleridge, C. J., and Lindley and Lopes, L. JJ., and a prior decision of Sir James Hannen, that where in a case of collision an action has been brought on behalf of one of the vessels, and the action discontinued by agreement "without costs, on the ground of inevitable accident," and subsequently the cargo owners on board one of the vessels obtain judgment of both vessels to blame, whereupon the owners, the original defendants,

Col.

Collision—*continued.*

obtain a decree limiting their liability, and the owners, the original plaintiffs, obtain an order from the judge rescinding the order of discontinuance; the original plaintiffs are entitled to claim against the fund paid into Court in the limitation action, the agreement and consent order amounting to a mere discontinuance of the action, and not to a release of all rights possessed by the parties thereto against each other. *The Ardandhu* (House of Lords, Feb. 15, 1887, Lord Chancellor, Lords Herschell, Bramwell, and Macnaughten).

smelling the ground: Held, that when a steamship is navigating a river or channel where there is danger of her smelling the ground, it is her duty to be under such control by occasionally stopping her engines or otherwise, that she may be able to avoid collision with other craft or vessels in case she does so smell the ground, and as a consequence not answer her helm properly. Held also, that a keel may drive up or down on a tide with her mast lowered and lashed to another keel, but it is her duty in such case to dredge with her anchor down, so as to be under control, and bring herself up if necessary. *The Ralph Creyke* (Admiralty, May 6 and 11, 1886, Sir James Hannen, assisted by Trinity Masters).

speed over ground, not through water: Held unanimously, reversing the decision of Sir Robert Phillimore, that where in the rules for navigating a tidal river it is stated that no steamship shall be navigated at a higher rate of speed than a maximum of six miles an hour; the speed to be considered is the speed over the ground, and not that through the water. *The R. L. Alston* (Court of Appeal, Nov. 25 and 27, 1882; Baggallay, Brett and Lindley, L.JJ.).

steam steering gear not acting: Held, that although the use of steam steering gear in a crowded river is not the use of a dangerous machine rendering the shipowner liable in the absence of negligence for damage caused in consequence of its failing to act, the fact of the said gear having refused to act a few days pre-

Col.

Collision—*continued.*

viously makes it negligence on the part of an owner to trust the control of a large ship in crowded waters entirely to the same—even though it has been in the meantime examined and pronounced in perfect order—as there could have been no objection to the use of the hand-steering gear. *The European* (Admiralty, March 17, 18, and 24, 1885; Butt, J., assisted by Trinity Masters). *Refer* p. 63.

steering gear not acting—improper navigation. *See* "Limitation of Liability."

sunken vessel—removal of wreck—lien on cargo. *See* "Limitation of Liability."

Thames Conservancy Rules: Held, affirming the decision of Sir R. Phillimore, that steamships rounding a point in the River Thames are not bound to stop and reverse because at one moment they are approaching a vessel coming in the opposite direction, when there is no risk of collision if both vessels continue the curvilinear course they are then on. Steamships navigating against the tide are always bound to obey Rule XXIII. of the Thames Conservancy Rules, 1880, and on approaching one of the points therein named must wait until vessels approaching it with the tide have passed clear. By "passed clear" is meant passed clear of the waiting ship. Whether vessels are also to observe Rule XXII., and pass port side to port side, depends upon whether the vessel navigating against the tide is close to the shore when waiting as aforesaid, or so far out as to allow the approaching vessel to pass port side to port side. *The Libra* (Court of Appeal, July 19, 1881, Jessel, M. R., and Brett and Cotton, L. JJ., with Nautical Assessors).

Thames Conservancy Rules: Held, that the Thames Conservancy Rules are not regulations made under or contained in the Merchant Shipping Acts, 1854 to 1873, and consequently sect. 17 of the Merchant Shipping Act, 1873, does not apply to such rules; that, therefore, a vessel is not to be deemed to be

Col.

Collision—*continued.*

in fault for infringing these rules, unless it be shown that such infringement contributed to the collision. *The Harton* (Admiralty, Feb., 22, 23, 1884, Butt, J., assisted by Trinity Masters).

Thames Conservancy Rules: Held unanimously, reversing a decision of the Court of Appeal (Brett, M. R., and Baggallay and Lindley, L. JJ.), and upholding a prior decision of Butt, J., that where a steamer proceeding up the Thames against the tide does not "ease and wait" before rounding certain points until other vessels proceeding down with the tide have passed clear and a collision ensues, she shall not be held to blame if it appear that the collision was caused solely by the negligent navigation of the other vessel. *The Margaret; Cayzer, Irvine & Co.* v. *The Cannon Co.* (House of Lords, July 25, 29, 31, and August 1, 1884, Lords Blackburn, Watson, and Fitzgerald).

tonnage—new and old register. *See* "Limitation of Liability."

tonnage—crew space in foreign vessel. *See* "Limitation of Liability."

trial trip—compulsory pilotage: Held unanimously, affirming the decision of the Second Division of the Court of Session in Scotland (Lord Justice Clerk Moncrief, and Lord Neaves, Lord Ormidale dissenting), affirming a prior judgment of the Lord Ordinary Mackenzie, that where a new steamer not yet out of the builder's hands is sent out on a trial trip without regularly appointed officers, but in charge of a duly licensed pilot by compulsion of law, and with a sufficient number of men to work the ship, and she comes into collision with another vessel, there is no contributory negligence on the part of such steamer, as the pilot is an experienced "sailing master" within the meaning of the bye-law of the local pilot board. *Clyde Navigation Co.* v. *Barclay* (House of Lords, May 22, 23, and 30, 1876, Lords Chelmsford, Hatherley, and Selborne).

Col.

Collision—*continued.*

unregistered launch not a ship. *See* "Limitation of Liability."

what is a ship? *See* "Barge not propelled by oars."

whistle heard in a fog: Held, that where, in a dense fog, a steamship is stopped and lying dead in the water, and the whistle of an approaching steamer is heard, the engines may be set ahead so as to get steerage way on her; but if more is done than this, and the engines set at a greater speed than is necessary for this purpose, she will be deemed to be guilty of contributory negligence if a collision ensue. *The Earl of Dumfries* (Admiralty, Jan. 14, 1885, Butt, J.).

whistle heard in a fog: Held unanimously, affirming the decision of Butt, J., that where in a dense fog those in charge of a steamship hear whistles getting nearer, even though apparently getting broader, on their ship's bow, it is their duty on hearing the first whistle to reduce their speed, and as the vessels get nearer to bring their vessel to as complete a standstill as is possible without putting her out of command; and when the other vessel has come close to, even though not in sight, to stop and reverse their engines, and their failure to do this promptly will be taken as contributory negligence if a collision ensue. *The Dordogne* (Court of Appeal, Nov. 25 and 26, 1884, Brett, M. R., and Cotton and Lindley, L. JJ., assisted by Nautical Assessors).

whistle heard ahead in a fog: Held unanimously, affirming the decision of Butt, J., that when those on a steamship in a dense fog hear the whistle or fog-horn of another vessel more than once on either bow, and in the vicinity, indicating that the vessel is nearing them, it is their duty, in order to prevent risk of collision, to at once stop and reverse the engines, so as to bring their vessel to a standstill in the water. *The John McIntyre* (Court of Appeal, June, 19, 1884, Brett, M. R., and Bowen and Fry, L. JJ., assisted by Nautical Assessors).

Collision—*continued.*

whistle heard ahead in a fog: Held unanimously, affirming the decision of Sir James Hannen, that if those in charge of a steamship in a dense fog, going slow, hear a whistle directly ahead, it is their duty to stop the engines at once, without waiting to hear from a second whistle whether it is a vessel approaching them or otherwise, and their failure to do so is to be considered as a breach of Arts. 13 and 18 of the Regulations for Preventing Collisions at Sea. *The Ebor* (Court of Appeal, Jan. 18 and 19, 1886, Lord Esher, M. R., and Lindley and Lopes, L. JJ., assisted by Nautical Assessors).

"wilful default" not necessarily barratry. *See* "Cargo Claims," p. 35.

Combination

to exclude certain vessels from trade. *See* "Conference Lines."

Commencement of Risk.

See "At and From"; "Open Policy."

buyer's risk. *See* "Contract of Sale and Purchase."

cargo part laden before. *See* "At and From."

lighters alongside lost. *See* "Freight."

Commissions

giving bail. *See* "Arrest of Ship."

managing owner. *See* "Managing Owner."

Common Carrier,

contract of carriage. *See* "Seaworthiness."

power to restrict liability. *See* "Passenger's Luggage."

Common Danger,

sacrifice for the benefit of all. *See* "General Average."

Company Steamer,

liability of member for club calls. *See* "Mutual Insurance."

Com.

Compulsory Pilotage,

ports where pilotage is free, and ports where it is compulsory, distinguished—

(F) means no compulsory pilotage;

(C) means pilotage is compulsory, subject to Local Acts and Regulations which it is impossible to detail here.

Port.		No. of Pilots.
Aberdeen	(F)	24
Arbroath	(C)	17
Arundel	(C)	3
Ayr	(C)	7
Ballina	(C)	10
Berwick	(F)	11
Belfast	(C)	23
Blakeney	(C)	6
Boston	(C)	7
Bristol	(C)	63
Cardiff	(F)	81*
Chester	(C)	39
Clyde	(C)	32
Cork	(F)	90
Coleraine	(C)	
Douglas	(F)	12
Drogheda	(C)	58
Dundee	(F)	14
Dublin	(C)	
Dundalk	(C)	
Elgin	(C)	4
Galway	(C)	22
Gloucester	(F)	21
Hartlepool	(F)	115
Hull, Trinity House	(C)—	
Humber		69
East Coast		19
Goole		3
Gainsborough		2
Wisbeach		6
Spalding		4
		—103
Irvine	(C)	3
King's Lynn	(C)	18
Kirkcaldy	(C)	2
Lancaster	(C)	4
Leith Harbour	(F)	93
Leith, Trinity House	(F)	131
Liverpool	(C)	241
Limerick	(F)	73
Llanelly	(C)	39
London, Trinity House	(C), including Outports	889
Londonderry	(C)	3
Newcastle, Trinity House	(F)—	
Tees Ports		42
Seaham		46
Whitby		10
Blyth		22
North Sunderland		6
Holy Island		32
Warkworth		6
		— 164
Newport	(F)	28
Newry	(F)	27
New Ross	(C)	6
Peterhead	(C)	35
Rosehearty	(F)	4
Sligo	(C)	19
Sunderland	(F)	164
Swansea	(C)	49
Tralee	(C)	9
Tyne, Sea	(F)	192
,, River		53
		— 245
Waterford	(C)	33
Westport	(C)	4
Wexford	(C)	18
Wick	(C)	10

* 13 are Bristol pilots holding supplemental licences.

Com.

Compulsory Pilotage—*continued.*

what it is and is not: Brett, L. J., in the course of his judgment in this case, held as follows:—"The duty of a pilot in England is to regulate the navigation of the ship, and to conduct it so far as the course of the ship is concerned. He has no other power on board the ship; he has no power over the discipline of the ship, or over the cargo on board; he cannot place a man on the look-out. If the vessel is a sailing ship, he gives the orders as to the sailing simply because she cannot be steered in a particular way without her sails being regulated as to quantity and position. Therefore, if damage arises by reason of his regulating the course of the ship, the owners are not liable. But if the ship, in consequence of the want of a look-out man, goes wrong, then, although the pilot has given the orders as to the course taken, if he has given such orders because he has not the proper information given him by the master and crew, it is not the fault of the pilot but of the master and crew, and, therefore, the owner is liable. In the same way, if the pilot give a certain order to the man at the wheel and he does not obey it, or obeys it too late, then, though the course be wrong, it is not solely the fault of the pilot, and therefore the owner is liable." *The Guy Mannering* (Court of Appeal, July 4, 1882, Lord Coleridge, C. J., and Brett and Cotton, L. JJ.).

anchoring before proceeding into dock—collision in dock: Held unanimously, reversing the decision of Sir Robert Phillimore, that in a port where pilotage is compulsory, the fact of a vessel having taken in the customary manner one pilot from sea to anchorage in river, and another pilot from the anchorage into dock, both pilotages being paid in one account, does not affect the compulsory pilotage which remains in force until the vessel reaches her ultimate destination in the dock, and covers the case of a collision occurring through default of the pilot whilst she is proceeding through one dock bound to a discharging berth in another dock. *The Rigsborgs Minda* (Court of Appeal, April 30,

Com.

Compulsory Pilotage—*continued.*

and May 1, 1883, Brett, M. R., and Cotton and Bowen, L. JJ., assisted by Nautical Assessors).

anchoring before docking in Mersey—extra pay—dragging anchor: Held, that a vessel arriving in the River Mersey and anchoring for the night, and as a consequence of boisterous weather remaining at her anchorage next day, is, notwithstanding that the pilot receives five shillings per day extra pay, a vessel with pilot on board by compulsion of law. Held, further, that if a vessel is dragging her anchors and coming down on another vessel, that is a matter which the pilot should see to himself, and it cannot be successfully argued that the look-out on board the vessel was bad because the fact was not reported to the pilot. *The Princetown* (Admiralty, Feb. 22, 23, and 25, 1878, Sir R. Phillimore).

anchoring in River Mersey before proceeding to sea: Held, that if a vessel leave a dock intending to proceed to sea, and in consequence of a slight accident is, by the directions of the pilot in charge, anchored in the River Mersey for the night, intending to proceed to sea the following day, she is not "proceeding to sea" within the meaning of the Mersey Docks Acts Consolidation Act (21 & 22 Vict. c. xcii.), and the pilot is not in charge by compulsion of law, so that if she gets into collision with another vessel the owners cannot plead compulsory pilotage. *The Cachapool* (Admiralty, Nov. 4, 5, 9, 1881, Sir R. Phillimore and Trinity Masters).

Clyde Pilotage Board. *See* "Collision," p. 74.

coaling port: Held, that where a steamship puts into a port within a pilotage district whilst on a voyage between two places outside such district, she is not exempt from compulsory pilotage, and cannot accordingly be held to blame for a collision occurring in such port of coaling. *The Winston* (Court of Appeal, April 29, 1884, Brett, M. R., and Bowen and Fry, L. JJ.).

Danube river: Held, that although pilotage is in one sense compulsory in the case of steamships navigating the Danube, inasmuch as Rule 89 says that a captain

Com.

Compulsory Pilotage—*continued.*

who has taken a pilot on board is none the less responsible for the observance of the regulations of the navigation, and by Rule 92 the responsibility of the pilot is confined to pointing out the navigable channels and the peculiarities of navigation, the position is that the captain is compelled to take a pilot, but is not compelled to give up the charge of the navigation of the ship; this is not compulsory pilotage in the legal sense, and the shipowner remains liable for damage done. *The Fitzjames* v. *The Agnes Otto* (Admiralty, Jan. 18 and 19, 1887, Butt, J., assisted by Trinity Masters).

double pleadings—merits and compulsory pilotage, costs: Held, that where a defendant in a collision action raises a defence on the merits and also on the ground of compulsory pilotage, and succeeds in the latter defence alone, he will not recover his costs. *The Matthew Cay* (Admiralty, Nov. 22 and 26, 1879, Sir R. Phillimore).

fog—getting underway—pilot giving improper order at suggestion of master: Held, that where a pilot is in charge of a ship by compulsion of law, although the master would be to blame if he allowed his vessel to be got underway when the weather was so bad, by reason of fog or otherwise, as to make navigation manifestly perilous, still, if the weather were not such as to give rise to a plain prospect of danger, although the getting underway might be very imprudent, it would not be negligence on the part of the master to consent thereto. Held, further, that where a pilot in charge of a ship by compulsion of law, gives at the suggestion of the master an improper order, which brings about a collision, such interference by the master does not transfer the responsibility of the pilot to the master so as to deprive the shipowners of the defence of compulsory pilotage. *The Oakfield* (Admiralty, Feb. 24, 1886, Sir James Hannen, assisted by Trinity Masters).

French law: Held unanimously, affirming the decision of Sir James Hannen, that, as according to French law the pilot, when on board in the discharge of his duty,

Com.

Compulsory Pilotage—*continued.*

is not entitled to supersede the authority of the captain, an owner cannot relieve himself of liability in a case of collision in a French port on the plea of compulsory pilotage. *The Chilian* v. *The Augusta* (Court of Appeal, February 15, 1887, Brett, M. R., and Bowen and Fry, L. JJ.).

improper lights—regulation lights: Held, that the exhibition of an improper light, or the failure to carry the regulation lights, is not excused by the fact that it was done in obedience to the orders of a compulsory pilot, it being the duty of the master to see that the lights required by the regulations are carried. *The Ripon* (Admiralty, March 2, 1885, Butt, J., assisted by Trinity Masters).

one vessel in charge of pilot—both to blame. *See* "Collision," p. 58.

onus of proof of contributory negligence: Held unanimously, that where the defence of compulsory pilotage is relied upon in a collision case, the onus of proving negligence on the part of the defendants or their servants causing or contributing to the collision, is on the plaintiff. *The Daoiz* (Court of Appeal, March 9, and April 18, 1877, Jessel, M. R., James, Mellish, and Baggallay, L. JJ.).

River Seine pilotage regulations: Held, that although the employment of a pilot when entering the port of Havre is compulsory by French law, the pilot does not, as in such cases in England, supersede the master in the charge of the ship, but, according to French decisions, is merely his adviser; hence the owners are not exempted from liability for damage done to another ship through the negligence of the pilot. *The Augusta* (Admiralty, July 26, 1886, Sir James Hannen, assisted by Trinity Masters).

River Tyne pilotage regulations: Held unanimously, affirming the decision of Sir James Hannen and Butt, J., that the Tyne Pilotage Order Confirmation Act, 1865, exempted all vessels, whether British or foreign, from compulsory pilotage in the port of Newcastle-on-

Compulsory Pilotage—*continued.*

Tyne. *The Johann Sverdrup* (Court of Appeal, Dec. 14 and 15, 1886, Lord Esher, M. R., Lindley and Lopes, L. JJ.).

sole defence carries costs: Held, that where in a damage action the defendants admit liability, but successfully establish a plea of compulsory pilotage, they are entitled to their costs. *The Royal Charter* (Admiralty, Feb. 10 and 16, 1869, Sir R. Phillimore). *Refer* p. 80.

Suez Canal: Held unanimously, affirming the decision of Sir Robert Phillimore, that inasmuch as by the regulations of the Suez Canal the pilot is to advise the master of the ship, but the master remains responsible for her navigation, such pilotage, though compulsory, does not exempt the owners of a ship from liability for damage done to another ship by the negligence or want of skill of such pilot. *The Guy Mannering* (Court of Appeal, July 4, 1882, Lord Coleridge, C. J., and Brett and Cotton, L. JJ.).

towing vessel: Held, that it is no part of the duty of a pilot employed by compulsion of law to be continually directing the movements of the tug, and if the said tug executes a wrong manœuvre which the ship is obliged to follow, and a collision ensue, the pilot is not to blame, and the owners cannot consequently plead compulsory pilotage. *The Sinquasi* (Admiralty, July 19th, 1880, Sir R. Phillimore and Trinity Masters).

tug not exempted from liability: Held, that a tug employed to tow a vessel which is in charge of a pilot by compulsion of law is not herself exempted from liability for damage done by her, whether from acting in obedience to the pilot's orders, or in the absence of any orders. *The Mary* (Admiralty, June 11 and 12, July 8 and 15, 1879, Sir R. Phillimore and Trinity Masters).

Concealment,

its nature as affecting the contract of insurance: . . . . "upon established principles a person insuring is bound to communicate every intelligence he has that

Con.

Concealment—*continued.*

may affect the mind of the underwriter in either of these two ways: first, as to the point whether he will insure at all; and secondly, as to the point at what premium he will insure." Mansfield, C. J., in *Lynch* v. *Hamilton.*

"Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact and his believing the contrary. But either party may be innocently silent as to grounds open to both to exercise their judgment upon. . . . . There are many matters as to which the insured may be innocently silent. He need not mention what the other party knows. The insured need not mention what the underwriter ought to know, what he takes upon himself the knowledge of, or what he waives being informed of." Lord Mansfield in *Carter* v. *Boehm.*

"The case in which an underwriter is said to waive being informed of a fact is where a representation made to him should suggest a doubt or inquiry to the mind, and he omits to make inquiry." Phillips on Insurance, s. 568.

The material fact which may not be concealed is that "which is known, or *presumed to be so*, to the party disclosing it, and is not known, or *presumed to be so*, to the other." Phillips on Insurance, s. 53.

agent and principal: Held unanimously, reversing the decision of the Court of Appeal (Lindley and Lopes, L. JJ., Lord Esher, M. R., dissenting), and reviving a prior decision of Day, J., that if an insurer instructs a broker to effect an insurance for him on a certain vessel, and the negotiations fall through, the agency of such broker ceases when the negotiations are at an end between the parties, and should the insurer subsequently effect an insurance on the vessel through another broker, the fact that the first broker was in possession of information of the loss of the vessel prior to the effecting of the insurance, and which information he did not communicate to the insurer, does not

Con.

Concealment—*continued.*

amount to a concealment of material fact "known, or which ought to be known," and the policy is good and can be recovered upon, providing neither the insurer nor his broker effecting the same had any knowledge of such loss. *Blackburn, Low & Co.* v. *Vigors* (House of Lords, Aug. 9, 1887, Lords Halsbury, Watson, Fitzgerald, and Macnaghten).

agent withholding news of disaster—negligence or fraud of third party: Held, that where a principal effects an insurance in ignorance of a disaster, information of which his agent withholds from him, declining to make use of the telegraph for that purpose, so permitting the principal to effect the insurance in good faith, the insurance is null and void; the implied condition on which the underwriter undertakes to insure is not only that every material fact which is, but also that every material fact which ought to be, in the knowledge of assured shall be made known to him. Where a loss must fall on one of two innocent parties through the fraud or negligence of a third, that ought to be borne by the party by whom the person guilty of the fraud or negligence has been trusted or employed. *Proudfoot* v. *Montefiore* (Queen's Bench, May 7 and June 15, 1867, Cockburn, C. J.).

cancelling date in charter. *See* "Chartered Freight."

fraudulent declaration of value. *See* "Open Policy."

lighterman's contract: Held unanimously, affirming the decision of Manisty, J., that in applying to an underwriter, all facts which one prudent and experienced would take into consideration ought to be communicated. That where lightermen have two contracts, one accepting all responsibility for loss unless caused by negligence, for which a higher rate of premium is consequently demanded, the fact of the goods being carried under such a contract is material, and ought to be disclosed to underwriters, and its concealment voids the policy. *Tate & Sons* v. *Hyslop* (Court of Appeal, June 12, 1885, Brett, M. R., Baggallay and Bowen, L. JJ.).

Con.

Concealment—*continued.*

over insurance—wagering policies: Held, by verdict of jury, indorsed by the opinion of the judge, that if an owner places lines on his vessel on "wagering" policies, unknown to his underwriters on hull, that is a concealment of material fact exonerating the underwriters from liability in case of loss. *The Commercial Bank of Scotland, Limited, and McEachran* v. *Lloyd's General Italian Assurance Co.* (Nisi Prius, July 5 and 6, 1886, before Field, J., and a special jury).

range of ports in policy of insurance—dangerous port: Held unanimously, reversing the decision of the Court of Queen's Bench, that if an owner effect an insurance at and from a known port of loading, "and port or ports of loading" in the same province or river, for the purpose of avoiding mention of a place of loading unknown to underwriters, or for which he fears underwriters would demand a special rate, there is concealment of a material fact, and the policy is vitiated thereby. The form of words as above are properly applicable to a case where the particulars of the voyage are uncertain and unknown, and they cannot be applied to a case where the owner knows the particulars of the voyage, and that the vessel is to proceed to a particular port. *Harrower* v. *Hutchinson* (Exchequer, Feb. 1 and June 17, 1870, Kelly, C. B., Willes, Byles and Brett, JJ., and Martin, Channell, Pigott and Cleasby, BB.).

Condemnation.

See "Abandonment;" "Constructive Total Loss;" "Sue and Labour Clause."

Conditions

per charter-party, bill of lading inconsistent therewith. *See* "Charter-party," p. 49.

Conference Lines,

combination to exclude certain ships: Held, that a combination of owners for the purpose of ruining the trade of other owners is a conspiracy against public policy, and therefore actionable, and in an action for damages, if the facts were fully proved, doubtless substantial damages would be given; but it is a matter for a jury

Conference Lines—*continued.*
to decide, and it is not therefore desirable to anticipate their decision by an injunction restraining the conference owners from continuing their combination. *The Mogul Steamship Co., Limited* v. *Macgregor, Gow & Co.* (Queen's Bench, July 31, Aug. 3 to 6, 1885, Lord Coleridge, C. J., and Fry, L. J.).

Confirmation
of insurance after loss. *See* "Freight."

Consent,
judgment by, order of registrar setting same aside. *See* "Collision," p. 71.

Consequences of Hostilities.
See "Capture and Seizure."

Consignee,
indorsing bill of lading. *See* "Bill of Lading," pp. 17, 19.
of bill of lading liable to pay freight. *See* "Bill of Lading," pp. 15, 16, 17.

Conspiracy
against public policy. "*See* Conference Lines."

Construction of Clauses,
general rule. *See* "Special Clauses." *Refer* p. 18.
intention not clearly expressed. *See* "Lay Days," p. 135. *Refer* p. 31.
"No St. Lawrence." *See* "Warranties."

Construction of Vessel
requiring special stowage. *See* "Cargo Claims," p. 45.

Constructive Total Loss.
See "Abandonment;" "Sue and Labour Clause."
its nature—values to be considered: . . . . "if the materials cannot be kept together as a ship at an expense less than their value as a ship when so kept, plus their value as materials not so kept together, the vessel is totally lost, or rather the loss of the vessel is total." Judgment of Bramwell, B., *Rankin* v. *Potter.*
. . . . "if the ship had been so damaged that it could be brought to Calcutta and there made seaworthy for a voyage round the Cape, but not without

Con.

Constructive Total Loss—*continued.*

expending, say 10,000*l.*, and would then, all things considered, be worth only 9,000*l.*, but that it could by an expenditure of 4,000*l.* be made a ship quite fit for short voyages, though not for such a voyage as that round the Cape, and would then be worth, say 5,000*l.*, there would be a total loss of the freight (from Calcutta to London), though no total loss of the ship." Judgment of Blackburn, J., *Roux* v. *Salvador*.

"Where the damage to the ship is so great from the perils insured against as the owner cannot put it in a state of repair necessary for pursuing the voyage insured, except at an expense greater than the value of the ship (when repaired), he is not bound to incur the expense, but is at liberty to abandon and treat the loss as a total loss, and recover the whole amount." C. J. Tindall's judgment, *Rankin* v. *Potter* (House of Lords, June 28, July 1, 4, and 5, 1872, Feb. 24, May 5, 1873).

abandonment too late: Held, that where a vessel receives damages which, when ascertained, make her a constructive total loss, underwriters are entitled to notice of abandonment without unreasonable delay, and if the vessel is detained at a port where the full extent of the damages cannot be ascertained in consequence of want of funds to meet ordinary disbursements, a notice of abandonment given to underwriters on arrival at her next port is too late, and owners can then only recover as for a partial loss. *Potter* v. *Campbell; Wingate* v. *James* (Common Pleas, June 28, 1867, Willes and Keating, JJ.). *Refer* pp. 1 to 5.

becoming absolute total loss and so insured. *See* "Absolute Total Loss."

cargo salved and sold. *See* "*Pro ratâ* Freight."

cargo worth forwarding to destination: Held unanimously, reversing the decision of the Court of Common Pleas (Erle, C. J., and Keating and Smith, JJ., Byles, J., dissenting) and a prior decision of Pigott, B., and a jury, that where a vessel is a wreck, and the question is whether her cargo is worth forwarding on

Constructive Total Loss—*continued.*

to its destination, it is correct to include in the expenses of transit all the extra expenses consequent on the perils of the sea, such as drying, landing, warehousing, and re-shipping the goods; but that it is not correct to take into account the fact that if it is carried on in the original bottom, or by the original shipowner in a substituted bottom, there will have to be paid the freight originally contracted to be paid, that being a charge to which it is liable when delivered, whether the perils of the sea affect it or not; and if the shipowner is not bound to carry the goods on, and does not do so, it is not proper to take into account the hull and the cost of transit from the place of distress to the place of destination, which must be incurred by the goods owner, if he carries them on, but only the excess of that cost above that which would have been incurred if no peril had intervened. *Farnworth* v. *Hyde* (Exchequer, June 17 and Nov. 29, 1866, Pollock, C. B., Channell and Pigott, BB., and Blackburn, Mellor, and Shee, L. JJ.). *Refer* p. 178.

exceptional ship's value: Held, affirming the decision of the Queen's Bench (Martin, B., and Keating, J., now dissenting), that in the case of a vessel of exceptional size and class, the market value of which would depend very materially upon whether the sale were at the instance of an owner anxious to sell or of a buyer anxious to purchase, if it be proved that, although the market price of the repaired vessel be less than the cost of repairs, the owners could not build or purchase a similar vessel at a figure within the cost of the repairs, then such vessel is not a constructive total loss. *Martin* v. *Grainger* (Exchequer, May 11, 1863, Erle, C. J., Williams and Keating, JJ., and Martin, Channell, and Wilde, BB.).

freight, loss of. *See* "Chartered Freight."

freight free of particular average—sue and labour clause—definition of particular average: Held unanimously, affirming the decision of Erle, C. J., and Willes, Keating, and Smith, JJ., that where an insurance is

Con.

Constructive Total Loss—*continued.*

effected on freight free of particular average, and the vessel puts into a port of distress and becomes a constructive total loss, the freight (although the cargo be forwarded at a cost of about one-half the original freight, and the whole freight paid by the receivers of cargo) is to be considered as totally lost with the loss of the ship, and the expense of forwarding cargo to avoid total loss is consequently recoverable in spite of the clause in the policy warranting the underwriters free of particular average, such expense not being in the nature of particular average, which is actual damage done to or loss of part of the subject-matter of insurance. *Kidstone* v. *The Empire Marine Ins. Co.* (Exchequer, Feb. 4 and 6, 1867, Kelly, C. B., Channell and Pigott, BB., Mellor and Lush, JJ.).

general average contribution—raising sunken vessel: Held (Martin, B., and Willis, J., dissenting on the grounds that a new trial was requisite), affirming the decision of the Court of Queen's Bench (Blackburn, J., Shee, J., dissenting), that where a vessel is sunk with part cargo on board, and the cost of raising her and repairing would exceed her value when repaired, it is material in determining the question of constructive total loss to take into account the liability, if any, of the cargo and freight to make general average contribution towards the expenses of the ship; and if, after deducting the amount of such contribution, the nett outlay does not exceed the value of the vessel when repaired, there is no constructive total loss. *Kemp* v. *Halliday* (Exchequer, May 10, 1866, Erle, C. J., Pollock, C. B., Martin, B., Willes, J., Channell, B., Keating, J., Pigott, B., and Smith, J.).

foreign Court acting contrary to its own laws: Held unanimously, that where a foreign Court admits charges against a cargo which are clearly not admissible according to the law of the country in which the Court is situated, and as a consequence the cargo becomes constructively totally lost and is ordered to be sold, British Courts are not bound to give effect to

Constructive Total Loss—*continued.*

such a decision, and may decree that there was no constructive total loss, and that the underwriter is liable only under the "suing and labouring" clause for expenses necessary to avert a total loss. *Meyer* v. *Ralli* (Common Pleas, May 9, 1876, Lord Coleridge, C. J., Grove and Archibald, JJ.).

marks obliterated in cargo. *See* "Total Loss."

master selling ship and cargo. *See* "Master's Agency."

notice of abandonment: Held unanimously, reversing the decision of the Common Pleas (Grove, Denman and Lopes, JJ.), and affirming a prior decision of Lord Coleridge, that where a vessel receives such damage as a consequence of sea perils that she has become a constructive total loss, the owner must, if possible, at once give notice of abandonment to underwriters; and if he neglects to do so, but, acting upon the recommendation of surveyors, sells the ship, he cannot sustain a claim for a total loss where the vessel was in a place of safety at the time of the sale and immediate action not absolutely necessary. *Kaltenbach* v. *Mackenzie* (Court of Appeal, May 30, 31, June 1 and 4, 1878, Brett, Cotton and Thesiger, L. JJ.). *Refer* pp. 1 to 5.

refusal of abandonment by underwriters and sale: Held, affirming the decision of Lindley, J. (Brett, L. J., dissenting), that where a vessel sustains damages by perils insured against, to such an extent as to make repairs inadvisable, and underwriters refuse to accept the owners' notice of abandonment, whereupon the owners effect certain necessary repairs and sell the vessel before the expiration of the policy, the measure of the underwriters' liability is the difference between the value of the vessel when undamaged or at the commencement of the risk and the balance which remained after deducting from the proceeds of the sale the cost of the repairs executed. *Pitman* v. *The Universal Marine Ins. Co.* (Court of Appeal, Dec. 9 and 10, 1881, and April 24 and 25, and June 6, 1882, Jessel, M. R., Brett and Cotton, L. JJ.).

Constructive Total Loss—*continued.*

rules of mutual association inexplicit—abandonment: Held unanimously, affirming the decision of Lush, J., that where by a rule or bye-law of a mutual insurance company it is stipulated that the company under any circumstances shall only pay for the absolute damage caused by the perils insured against, this stipulation is not sufficiently explicit to exclude a claim for constructive total loss. The power of abandonment is an ordinary incident to a valued policy, and is not to be taken away except by express words. *Forwood* v. *North Wales Mutual Marine Insurance Co.* (Court of Appeal, June 7, 1880, Bramwell, Baggallay, and Brett, L. JJ.).

sale of vessel—repairs making vessel fit for certain trades—prudent uninsured owner: Held, refusing application for a new trial, and upholding direction of Manisty, J., to a jury, that the point to be considered in determining whether a vessel is a constructive total loss or not is not whether the vessel could be so repaired as to be seaworthy for a certain trade, at a cost within her value when so repaired, but whether a prudent uninsured owner would or would not have repaired. *The Commercial Bank of Scotland* v. *Head* (June 26, 1886, before Pollock, B., and Mathew, J.).

temporary seizure by natives. *See* "Capture and Seizure."

Contact Clause,

metalling clause—internal contact: Held, that where a policy of insurance contains the clause, "Warranted free from particular average below the marked load-line, unless caused by . . . . . or contact with some substance other than water," damage caused to the vessel below the load-line, by the cargo breaking adrift, is contact with "other than water" within the meaning of the clause, external contact not being expressly stated. *Cruickshank Gass & Co.* v. *Maritime Ins. Co.* (Liverpool Assizes, August 9, 1886, Cave, J.).

Con.

Contempt of Court,
removing arrested vessel. *See* "Arrest of Ship."
removing vessel arrested by telegraph. *See* "Arrest of Ship."

Contract,
cargo not according to. *See* "Acceptance in exchange for documents."
of carriage. *See* "Seaworthiness." *Refer* p. 48.
general rule of construction. *See* "Special Clauses."
implied meaning. *See* "Lay Days," pp. 135, 137.
of insurance. *See* "Concealment."
master's, how binding on owners. *See* "Salvage," pp. 194, 199, 206. *Refer* pp. 3, 24, 159, 239.
passenger's contract. *See* "Life, Loss of."
passenger's luggage. *See* "Passenger's Luggage."
of towage. *See* "Tug and Tow."

Contract of Sale and Purchase,
See "Acceptance in Exchange for Documents;" "Sale."
arbitrator making mistake. *See* "Arbitration."
bills of lading in triplicate—tender of two only: Held unanimously, reversing the decision of Pollock, B., that where under a contract payment is to be made in exchange for bills of lading, and the said bills of lading are made in triplicate, and one retained by the shipper abroad, a tender of the others is sufficient, and the vendor is not entitled to refuse to accept the same on the ground that by so doing he runs the risk of the shipper or other person dealing fraudulently with the other part. *Sanders Brothers* v. *Maclean & Co.* (Court of Appeal, April 6 and 28, 1883, Brett, M. R., and Cotton and Bowen, L. JJ.). *Refer* p. 17.
commencement of buyer's risk—part cargo only shipped: Held by Lords Chelmsford and Hatherley (Lords O'Hagan and Selborne dissenting), confirming a decision of the Exchequer Chamber (Bramwell, Pollock, and Amphlett, BB., Blackburn, Lush, and Quain, JJ.), which reversed a decision of the Court of Common Pleas (Lord Coleridge, C. J., Brett, and Denman, JJ.),

Contract of Sale and Purchase—*continued.*

that where a contract of sale and purchase is worded as follows: "Bought for account of A. B. & Co., the cargo of new crop rice, per 'Sunbeam,'" the contract is one for a full cargo, and if the vessel be lost during loading, and before a full cargo is shipped, the buyer cannot recover from his underwriters, even though his policy be "at and from," his insurable interest not having commenced. *Anderson* v. *Morice* (House of Lords, June 27 and 29, July 3 and 27, 1876, Lords Chelmsford, Hatherley, O'Hagan, and Selborne).

liability of purchasers of ship for club calls. *See* "Mutual Insurance."

Contradictory Clauses,

printed and written. *See* "Charter-party," p. 52.

Contribution

of salved goods to subsequent general average expenses. *See* "General Average," p. 120.

of specie to salvage. *See* "Salvage," p. 205.

Contributory Negligence,

error of judgment not necessarily such. *See* "Collision," p. 61.

infringement of regulations not necessarily such. *See* "Collision," pp. 63, 64.

onus of proof of. *See* "Compulsory Pilotage."

tow not casting off rope. *See* "Tug and Tow."

Co-ownership,

bond to minority shareholder for safe return: Held, that a shareholder in a vessel who is dissatisfied with the management of the vessel and with a proposed voyage may, notwithstanding that he did not oppose the appointment of the manager, demand a bond from the other shareholders for the safe return of the vessel, and if this bond be not given he may arrest the vessel, and in such case the vessel will only be released on bail bond being given for the value of his shares. *The Talca* (Admiralty, Feb. 19, 1880, Sir R. Phillimore).

collision—master part-owner. *See* "Limitation of Liability," p. 150.

Co-ownership—*continued.*

forced sale of ship: Held, that the Admiralty Court will not order the sale of a ship on the application of either minority or majority owners unless the applicants prove a strong necessity for so doing. *The Marion* (Admiralty, Dec. 2, 1884, Butt, J.). *Refer* p. 96.

liability for club calls. *See* "Mutual Insurance."

liability for loss on voyage: Held, that the purchaser of shares in a ship which had proceeded foreign under a time charter, and, the charterer having failed, was at the time of the purchase proceeding home under another charter effected in consequence of such failure, was not liable for any loss occurring under the charter which was at an end before he became interested in the vessel. *White* v. *Ditchfield* (Admiralty, March 11, 1885, Butt, J.).

liability on bail bond: Held unanimously, that where a managing owner of a vessel, which has been arrested in the Admiralty Court in a suit for collision, induces a person to become bail for the ship in the Admiralty Court, that person, the managing owner having become bankrupt, is entitled to recover back the money so paid from the co-owners; the ship's husband or managing owner having authority to do whatever is necessary to enable the ship to prosecute her voyage and earn freight, and to bind his co-owners thereby. *Barker* v. *Highley* (Common Bench, April 15, May 28, and July 6, 1883; judgment of Court delivered by Williams, J.).

majority owners—managing owner refusing to plead: Held, that when a majority of the shareholders have brought an action *in rem* against a ship, claiming possession and an account against the managing owner, if the said managing owner makes default in appearing the Court will add his name as defendant, and so compel him to submit accounts. *The Native Pearl* (Admiralty, Dec. 4, 1877, Sir R. Phillimore).

managing owner not insuring: Held, that where a managing owner, who has in the accounts rendered to the shareholders charged items for insurance of a ship, charters her to a port by proceeding to which her

Co-ownership—*continued.*

insurances are cancelled, without informing certain shareholders, and without arranging for other insurances, and the ship is lost, he is liable to such shareholders for their *pro ratâ* of the insurance so voided. *The A. M. Brundrit* (Liverpool Assizes, Feb. 11, 1887, Smith, J., and a Special Jury).

managing owner not paying accounts—misrepresentation of creditor—misleading acts: Held unanimously, reversing the decision of Mathew, J., that a co-owner in a ship does not discharge his liability as such for goods supplied to the ship by settling with the managing owner accounts in which the goods are debited; it is his duty to inspect the vouchers, and if he omits to take this precaution he is liable to be sued by the party supplying the goods, even four years after they were supplied, if the account be still unpaid and there is no misleading conduct on the part of the creditor, the delay not being of such a nature as to amount to misrepresentation. *Davison* v. *Donaldson* (Court of Appeal, June 16, 1882, Jessel, M. R., and Lindley and Bowen, L. JJ.).

managing owner misapplying funds: Held, that where a part-owner of a ship pays to the managing owner his contribution due upon the ship's accounts as agreed between the co-owners, the managing owner receives such contribution as agent for all the owners, and in case he misapplies such payments and does not pay the ship's accounts therewith, the contributing owner is entitled to be credited with the amount so paid, and the defalcation be treated as a loss which all the owners must make good in proportion to their shares. *The Ida* (Admiralty, April 20, 1886, Butt, J.).

managing owner misapplying funds—necessaries: Held, that the liability of the part-owner of a vessel is not discharged if he remit, even with the consent of the creditor to the managing owner thereof, the amount of his *pro ratâ* indebtedness, but that if the debt be not discharged by the managing owner he still remains liable, in the first instance, for the full amount of the

Co-ownership—*continued.*

debt, his remedy being against his co-owners. *Austin & Co.* v. *Hardy* (City of London Court, July, 1887, Harrison, Deputy Judge).

managing owner, money due to. *See* "Managing Owner."

master part-owner. *See* "Master's Wages." *Refer* p. 150.

part-owner engaging apprentices, &c. *See* "Crimping."

sale and purchase of shares: Held unanimously, that the purchaser of shares in a ship under charter only becomes liable for his *pro ratâ* of wages and disbursements as from the date of sale and purchase, should the vessel be lost before any freight is earned. Although entitled to his share of the profits of the voyage, if any, he is further entitled to a vessel fit to earn the freight, and has therefore no liability for cost of repairs, wages, &c., incurred prior to the commencement of his ownery. *Carswell & Son* v. *Finlay* (Edinburgh Court of Session, July 8, 1887, Lord President Inglis, and Lords Mure, Shand and Adam).

sale of shares already mortgaged: Held, that if a managing owner contract to sell a share or shares in a vessel, which share or shares he is not in a position to sell, it or they being mortgaged, and a subsequent managing owner refuses to execute a bill of sale of the share or shares for that reason, the shareholders in the vessel cannot thereafter sue the person who contracted to buy the share or shares for any portion of the vessel's liabilities. *The Bonnie Kate* (Admiralty, June 15, 1887, Butt, J., and Trinity Masters).

sale on request of a minority of shareholders: Held, that the Court has power, under the Admiralty Court Act, 1861, s. 8, in a co-ownership action, to order the sale of a ship on the application of a minority of shareholders, and will exercise such power when it appears that a sale is to the interest of the owners, but such power will always be exercised with great caution.

Held further, that where a master had been appointed conditional upon taking 12/64 shares in a vessel, himself and friends, and he is subsequently

Co-ownership—*continued.*

dismissed, himself and friends owning 11/64ths objecting, a reasonable course to adopt is to value the shares of the objecting minority and give the majority the option of purchase, and if they do not exercise the option then the sale of the vessel is to be ordered. *The Nelly Schneider* (Admiralty, April 4 and 5, 1878, Sir R. Phillimore).

shares—fraudulent registration: Held, that an original holder of shares in a vessel cannot enforce his title to such shares against a *bonâ fide* purchaser who has bought them from a person whose name was duly registered as owner thereof, even though such person may have been registered through fraud practised upon the original owner. *The Horlock* (Admiralty, May 5, 15, 29, 1877, Sir R. Phillimore).

unregistered shares—mortgaged ship: Held, that where a managing owner has sold 8/64th shares in a vessel to a person who has neglected to register same, and subsequent to such sale has mortgaged the whole ship, the owner of the 8/64th shares cannot subsequently register and maintain a suit against the ship, claiming as against the managing owner an account of the sale of the ship, if the mortgagee holding a mortgage which would not be satisfied by the sale of the ship intervenes and demands the sale of the ship. *The Eastern Belle* (Admiralty, June 1 and 2, 1875, Sir R. Phillimore).

Costs,

defence, compulsory pilotage only. *See* "Compulsory Pilotage."

defence, merits and compulsory pilotage. *See* "Compulsory Pilotage."

exorbitant agreement between masters for salvage. *See* "Salvage," p. 194.

liability for, admitted by payment into Court. *See* "Salvage," p. 205.

master's appeal. *See* "Board of Trade Inquiry."

original claim reduced at reference. *See* "Collision," p. 68.

payment into Court, up to date of. *See* "Salvage," p. 205.

Costs—*continued.*

registrar finding both claim and counter-claim fair. *See* "Collision," p. 69.

sailor's solicitor suing for, the claim made by sailor having been settled without his knowledge. *See* "Seamen's Wages."

sale of ship, mortgage action. *See* "Mortgage."

sale of ship, necessaries action. *See* "Mortgage."

tender and payment into Court. *See* "Salvage," p. 205.

two-thirds to three-fourths of claim awarded. *See* "Collision," pp. 68, 69.

unreasonable conduct, refusal of offer before action. *See* "Salvage," p. 205.

County Court,

appeal from judgment finding tender of 50*l.* sufficient. *See* "Salvage," p. 195.

Courses Crossing.

See "Crossing Courses."

Court of Appeal,

Divisional Court—stay of payment: Held unanimously, that it is a rule of conduct of the Court of Appeal not to overrule the decision of the Court below upon a question of discretion, such as a refusal to order a stay of payment of damages, especially when such decision was in accordance with the judge at Chambers, unless in a very strong case, and that although there is an appeal on such a question, the appeal would in most cases be practically hopeless. Upon the motion for a new trial, however, the defendants might prove that the verdict was against the weight of evidence. *Premuda* v. *Stewart* (Court of Appeal, April 8, 1886, before Lord Esher, M. R., and Lindley and Lopes, L. JJ.).

Court ordering Sale

of salved cargo. *See* "*Pro ratâ* Freight."

of ship. *See* "Collision," p. 70.

Craft Risk,

brought alongside at ship's risk. *See* "Charter-Party," p. 52.

transhipment not covered: Held, affirming decision of

Craft Risk—*continued.*

Field, J., that a policy of insurance containing the clause, "including all risks of craft until the goods are discharged and safely landed," only includes the risk of transit in lighters when, in the ordinary course of business, they are conveying the goods from a vessel to the shore, and does not include the risk of conveying the goods to another vessel—*i. e.*, the risk of transhipment. *Houlder Bros. & Co.* v. *The Merchants Marine Ins. Co.* (Court of Appeal, June 12, 1886, before Bowen and Fry, L. JJ.).

Crew Space,

foreign vessel. *See* "Limitation of Liability."

Crew and Engine Space,

tonnage measurement. *See* "Limitation of Liability."

Crimping,

owner engaging seamen or apprentices: Held, affirming the decision of Sir R. Carden, that where a person has *bonâ fide* purchased one sixty-fourth share of a British ship, but the share has not been transferred to him by bill of sale, nor has he been registered as owner, and he has engaged and supplied an apprentice to be entered on board the said ship, he is an owner within the meaning of the Merchant Shipping Amendment Act, 1862, s. 3, and not liable to be convicted under the Merchant Shipping Act, 1854, s. 147, sub-s. 1. *Hughes* v. *Sutherland* (Queen's Bench, June 22, 1881, Coleridge, C. J., and Manisty, J.).

Crossing Courses,

steamers—narrow channel. *See* "Collision," pp. 58, 62, 68.

wrong manœuvre observed—stop and reverse. *See* "Collision," p. 58.

Crossing and Overtaking.

See "Collision," p. 68.

Crossing the Atlantic,

warranty of seaworthiness therefor. *See* "Seaworthiness."

Crowded Waters,

failure of steering gear to act. *See* "Collision," pp. 63, 72.

Custom

as to collection of general averages by cargo-owners. *See* "General Average."

Custom of Port,

discharge according to. *See* "Lay Days," p. 138.

discharge as fast as will permit. *See* "Lay Days," p. 137.

discharge from ship's tackles. *See* "Bill of Lading," p. 17.

discharge on to quay or into lighters. *See* "Bill of Lading," p. 17.

discharge to lighten vessels, and then moving to port. *See* "Lay Days," p. 136, and pp. 48, 53.

discharge with all dispatch as customary. *See* "Lay Days," p. 136.

lighterage. *See* "Charter-party," pp. 48, 53, and p. 136.

lighterage, scarcity of lighters. *See* "Lay Days," pp. 139, 141.

Liverpool average bond. *See* "General Average."

loading—cargo by canal—canal frozen. *See* "Lay Days," p. 139.

loading—cargo by river—river frozen. *See* "Lay Days," p. 137.

unreasonable custom. *See* "Lay Days," p. 136.

Custom of Trade,

jettison of deck cargoes. *See* "General Average;" *also* "Deck Cargo."

Customary Manner,

discharge in. *See* "Lay Days," p. 138.

Damage,

See "Damages."

abandoned vessel damaging piers: Held unanimously, reversing the decision of the Queen's Bench Division, that where a vessel which has been stranded outside a pier and abandoned by her master and crew, drives against such pier, and occasions damage thereto, the owner is not liable for any such damage, the same being the act of God, and beyond his control. *River Wear Commissioners* v. *Adamson* (Court of Appeal, May 23, 1876, Jessel, M. R., Mellish, L. J., Denman, J. and Pollock, B.).

Damage—*continued.*

anchor carried in an improper position. *See* "Collision," p. 59.

revealing rotten wood. *See* "Collision," p. 59.

salvor receiving damage. *See* "Salvage," p. 196.

Damaged Cargo,

Refer pp. 32 to 45.

cargo owner asking for delivery at intermediate port. *See* "*Pro ratâ* Freight."

rats eating through pipe, and admitting water to cargo. *See* "Cargo Claims," p. 39.

rats eating and destroying the cargo itself. *See* "Cargo Claims," p. 39.

refusal of shipowners to re-ship. *See* "Cargo."

reshipment insisted upon by shipowner. *See* "Discharge of Cargo."

water pumped into hold to extinguish fire. *See* "General Average."

Damaged Ship,

good safety—pumping. *See* "Termination of Risk."

Damages,

See "Damage."

arrest of ship. *See* "Arrest of Ship."

arrest of ship, bottomry bond not due. *See* "Bottomry."

claimable and not claimable. *See* "Ship Repairers."

collision damages ranking before seamen's wages. *See* "Lien."

collision damages exceeding 8*l.* per ton. *See* "Limitation of Liability."

collision—master part-owner. *See* "Limitation of Liability."

delay in delivering vessel after repairs. *See* "Ship Repairers."

late delivery of goods—collision. *See* "Cargo Claims," pp. 39, 40.

limited and non-limited vessels. *See* "Limitation of Liability."

loss of market. *See* "Cargo Claims," pp. 39, 42, 43.

proof of loss by delay. *See* "Tug and Tow."

stay of payment refused. *See* "Court of Appeal."

Damages—*continued.*

stay of payment refused—foreigner without property in this country. *See* "Foreign Plaintiff."

wrongfully taking possession of a cargo. *See* "Acceptance in exchange for documents."

Damages not repaired,

substituted repairs—underwriter's liability: Held, that if a vessel originally fitted with saloon accommodation for passengers, becoming obsolete for passenger traffic, be permanently employed as a cargo carrier, and whilst so employed she receives damage involving the destruction of the saloon accommodation aforesaid, and the owners repair her as a cargo boat only, at a less cost than the re-instating of the saloon would have involved, the underwriter is not liable to contribute as if the saloon had been re-instated, or more than the actual outlay, providing the vessel be as valuable after the repairs are completed as she was before the accident. *Bristol S. N. Co.* v. *Indemnity Mutual Marine Insurance Co.* (Queen's Bench, June 23, 1887, Mathew and Cave, JJ.).

Dangers—

of navigation—collision. *See* "Charter-party," p. 50.

Dangerous port—

covered by description of port or ports. *See* "Concealment."

Dangerous machine—

in crowded river—steam-steering gear. *See* "Collision," p. 72.

Danube pilotage.

See "Compulsory Pilotage."

Days after arrival.

See "Bottomry."

Dead slow—

in fog—sailing vessel—speed excessive. *See* "Collision," p. 70.

Deck Cargo,

at shipper's risk—collision. *See* "General Average."

at shipper's risk—jettison. *See* "General Average."

Dec.

Deck Cargo—*continued.*

illegal shipment thereof by master: Held unanimously, affirming the decision of Cockburn, C. J., and L. JJ. Blackburn and Mellor, that if the master of a vessel loads part of a deck cargo, without the owner's authority or knowledge, contrary to the Customs Consolidation Act (16 & 17 Vict. c. 107, s. 107 *et seq.*), the policy on freight is not rendered void. The master of the vessel cannot bind the owner as his principal to illegal acts, and the said acts without the knowledge or consent of the owner amount to barratry within the terms of the policy. *Wilson* v. *Rankin* (Exch. Ch. Nov. 27, 1865, Erle, C. J., Pollock, C. B., Willes and Byles, JJ., Channel, B., Keating, J., and Pigott, B.).

jettison of cattle: Held unanimously, reversing decision of Manisty and Lush, JJ., that if a vessel with cargo under deck belonging to one set of shippers, takes cargo on deck, where there is no custom to carry cargo on deck—as when the voyage is not a coasting one—general average being treated as matter of implied contract, that ought not to be implied where risk and benefit are not in fair proportion, and that if the deck cargo be necessarily jettisoned in the course of the voyage, the owners thereof can have no claim against shipowner or other cargo owners, although their contract with the shipowner specified that the goods were to be carried on deck. *Wright* v. *Marwood* (Court of Appeal, March 15 and May 16, 1881, before Lord Coleridge, L. C. J., Bramwell and Baggallay, L. JJ.).

jettison of wood goods: Held, that if a deck load (wood goods), carried by consent of shipper of the under-deck cargo or by custom of trade, break adrift, and because it is impeding the navigation of the ship and endangering her safety, rendering the pumps unworkable, be thrown overboard, the loss is a general average loss, the jettison being made to avert a danger common to all the interests concerned. *Johnson* v. *Chapman* (Common Pleas, May 30 and July 10, 1866, Willes, J.). *Refer* p. 121.

Decks and Waterways,
leaking after stranding—not putting back. *See* "Cargo Claims," p. 44.

Declaration of Value,
amendment. *See* "Open Policy."
fraud. *See* "Open Policy."

Deduction of Thirds,
first voyage. *See* "Voyage."

Deductions
from tonnage for crew space. *See* "Limitation of Liability."

Defective Machinery,
seaworthiness. *See* "Salvage," p. 204, and p. 153.
steering gear. *See* "Collision," pp. 63, 72.

Defying Master,
salvors taking charge. *See* "Salvage," pp. 198, 202.

Delay
in delivering vessel after repairs. *See* "Ship Repairers."
in towage service through collision. *See* "Tug and Tow."

Deliver
to———, looking to them for freight. *See* "Bill of Lading," p. 17.

Delivery
alongside—mate's receipts. *See* "Cargo Claims," p. 42.
short of destination, *pro ratâ* freight. *See* "Charter-party," p. 47.
to holder of one bill of lading. *See* "Bill of Lading," p. 17.

Demurrage,
See "Lay Days;" "Charter-party."
indorsee of bill of lading becoming liable for. *See* "Bill of Lading," pp. 15, 16.
premium of insurance included: Held, that in an action by a shipowner against a charterer, if the shipowner have recovered demurrage for time lost in shifting from an unsafe to a safe port, he cannot recover in addition the insurance of the ship whilst so shifting and lying on demurrage, insurance being a part of the fair ex-

Demurrage—*continued.*

penses of the shipowner, must be taken to be provided for in the demurrage. *Evans* v. *Bullock* (Common Pleas, Nov. 9, and Dec. 21, 1877, Denman, J.).

salving vessel's claim. *See* "Salvage," p. 196.

tug claiming for delay through collision. *See* "Tug and Tow."

Depreciation

of salving vessel through overstrain. *See* "Salvage," p. 196.

Derelict,

See "Salvage," pp. 197, 202.

towed into port. *See* "Abandonment."

Detention,

See "Lay Days."

perishable goods—collision. *See* "Cargo Claims," p. 40.

salvor. *See* "Salvage," p. 196.

Deviation,

all liberties as per bills of lading—ports not on the way: Held, that where, under an open policy, goods are insured from Antwerp to Odessa, and part of such goods are shipped and declared by steamers which, instead of proceeding direct to Odessa, accept general cargo for Batoum and Nicolaieff, the words in the policy, "all liberties as per bills of lading," must be taken as referring to the bills of lading over the particular goods insured by such policy, and if the vessel deviate from the voyage, Antwerp to Odessa, by proceeding to Batoum and Nicolaieff, and a loss ensue, the underwriters are not liable. *Labinovich* v. *The Pacific Fire & Marine Insurance Co.* (Queen's Bench, Feb. 28, 1887, A. L. Smith, J., and a Special Jury).

liberty to call in any order. *See* "Cargo Claims," p. 40.

other than for life-salvage, shipowner's liability. *See* "Cargo Claims," p. 40.

towing vessels in distress—life salvage: Deviation for the purpose of saving life is protected, and involves neither forfeiture of insurance nor liability to the goods' owner in respect of loss which would otherwise be within the exception of "perils of the seas." And, as

Deviation—*continued.*

a necessary consequence of the foregoing, deviation for the purpose of communicating with a ship in distress is allowable, inasmuch as the state of the vessel in distress may involve danger to life. On the other hand, deviation for the purpose of saving property is not thus privileged, but entails all the usual consequences of deviation. But where the preservation of life can only be effected through the concurrent saving of property, and the *bonâ fide* purpose of saving life forms part of the motive which leads to the deviation, the privilege will not be lost because the purpose of saving property may have formed a second motive for deviating. If the lives of the persons on board a disabled ship can be saved without saving the ship, as by taking them off, any deviation for the purpose of saving the ship will carry with it all the consequences of an unauthorised deviation. Justice Sprague (American) in *Crocker* v. *Jackson*, entirely concurred in by Cockburn, C. J., in *Scaramanga* v. *Stamp and Gordon*.

Different Sets of Salvors.

See "Salvage."

Disbursements,

See "Master's Wages, &c."

bill drawn by master of foreign vessel. *See* "Lien."

insurance of. *See* "Necessaries."

Discharge of Cargo,

See "Lay Days."

reshipment—damaged: Held, that where a cargo has been shipped and the voyage is delayed by an accident not within the perils excepted in the contract of affreightment (*i. e.*, collision, other vessel to blame), in consequence of which the cargo has to be discharged, the shipowner has a lien on the cargo for the earning of his freight, and can insist upon reshipping the original cargo if it is capable of being carried on, and the cargo-owner cannot insist upon a new cargo being shipped because the original one is deteriorated through the discharge. *The Blenheim* (Admiralty, June 7 and Aug. 4, 1885, Sir James Hannen).

Discharge of part Cargo
for re-stowage. *See* "Cargo Claims," p. 44.

Discharging,
See "Lay Days."
on to quay or into lighters. *See* "Bill of Lading," p. 17.
selling cargo at port of distress. *See* "*Pro ratâ* Freight." *Refer* pp. 3, 239.

Disinfecting
vessel, shipowner's duty. *See* "Bill of Lading," p. 20.

Dismasted
vessel with an auxiliary screw. *See* "General Average."

Distress,
See "Salvage;" "Barge not propelled by oars."
communicating with vessels in. *See* "Deviation."
towing vessels in. *See* "Deviation."

Dock Company's Bye-laws,
bye-laws exceeding powers of Act of Parliament—lumpers: Held, that a dock company has no right to make bye-laws in excess of the powers clearly conferred upon them by Act of Parliament; that, for instance, where a dock company had power to make bye-laws for regulating the shipping and unshipping of goods within their premises such bye-laws did not give them power to exclude "lumpers" except such as were specially authorised by them. *Dick and Page* v. *Badart Frères* (Queen's Bench, March 3, 1883, Cave, J.).

Dock Dues,
repairs for account of owners and underwriters—painting and cleaning bottom: Held unanimously, affirming the decision of the Court of Appeal (Lord Esher, M. R., and Fry, L. J., Baggallay, L. J., dissenting), which reversed a judgment of the Queen's Bench (Pollock, B., and Manisty, J.), that where a vessel is put into dock for the purpose of having her bottom cleaned and painted, and while in dock damages are found requiring repairing at underwriters' charges, the dock dues from the commencement ought to be divided between

Dock Dues—*continued.*

owners and underwriters, and the underwriters pay the whole cost of the dock in excess of the time required to clean and paint the vessel's bottom. *Marine Ins. Co., Limited* v. *China Trans-Pacific S. S. Co., Limited* (House of Lords, July 12, 13 and 30, 1886, Lord Chancellor Herschell, Lords Blackburn, Fitzgerald, and Ashbourne).

Docking and Undocking,

See "Limits of Port."

anchoring before docking—River Mersey. *See* "Compulsory Pilotage."

Donkey Engine,

fuel used for pumping. *See* "General Average."

discharging cargo, goods spotted with grease and dirt. *See* "Cargo Claims," p. 44.

pump air-chamber bursting. *See* "Machinery Claims."

Double Collision,

limiting liability. *See* "Collision," p. 65.

Double Proceedings,

collision action. *See* "Collision," p. 60.

Draft of Water,

fresh and salt water. *See* "Charter-party," p. 50.

Dragging Anchor,

pilot's duty to know thereof. *See* "Compulsory Pilotage."

Dry Dock Dues,

owners' and underwriters' repairs. *See* "Dock Dues."

Dunnage,

insufficient. *See* "Cargo Claims," p. 45.

Ease and Wait,

rounding point in River Thames. *See* "Collision," p. 74.

Effecting

re-insurance after arrival. *See* "Premium."

Engagement

of salvors, not necessary. *See* "Salvage," p. 199.

Engaging

apprentices or seamen. *See* "Crimping."

Engineer's Log,
See "Evidence."

Engines racing,
salvor—damages. *See* "Salvage," p. 196.

Enhanced
value in lieu of freight. *See* "Cargo ship's account."

Entering
River Tyne. *See* "Collision," p. 61.

Entries
in log-book. *See* "Log-book."
in engineer's log. *See* "Evidence."

Error
in adjustment, underwriters overpaying. *See* "Average adjustment."
of judgment not always contributory negligence. *See* "Collision," p. 61.

Errors and Omissions,
amendment of declaration. *See* "Open Policy."

Estoppel,
of plea of unstamped policy. *See* "Mutual Insurance."

Evidence,
engineer's log: Held, that in a damage action the log kept by the engineer is admissible as evidence against his owners. *The Earl of Dumfries* (Admiralty, Jan. 15, 1885, Butt, J.).
entries in log-book signed two days after event not admissible as. *See* "Log-book."
letter from master to owners: Held, that in an action for damage to cargo caused by vessel running aground, statements as to what the captain did or saw, or what orders he gave, but not as to his opinion of the cause of the casualty, contained in a letter written to his owners, are admissible as evidence against the owners. *Burt and others* v. *Livingstone* (Admiralty, July 16, 1885, before Sir James Hannen).
loss or damage to salvor. *See* "Salvage," p. 196.
taken in error. *See* "Arbitration."

Exceptional Vessel,
value. *See* "Constructive Total Loss."

Excessive amount,
arrest in. *See* "Salvage," p. 195.
bail, perishable cargo. *See* "Cargo Claims," p. 40.
demands, waiver of tender. *See* "Tender."
salvage, reduction of amount. *See* "Salvage."
valuation. *See* "Value in Policy."

Exorbitant Award,
appeal against. *See* "Salvage," p. 195.

Expenses,
of re-loading cargo. *See* "Port of Distress."

Expiry of Policy,
See "Chartered Freight;" "Policy;" "Voyage," and p. 225.

Extra Pay,
anchoring before docking. *See* "Compulsory Pilotage."

Extra Pumping,
fuel for donkey engine. *See* "General Average."

Extraordinary,
though invisible and unascertainable peril of the seas. *See* "Seaworthiness."

Facilities of Port,
surpassing production of mines. *See* "Lay Days," p. 140.

Factors,
servants or assignees, underwriters salving. *See* "Sue and Labour Clause."

Failure
of steam-steering gear to act. *See* "Collision," pp. 63, 72.

Fairway,
excessive speed in. *See* "Collision," p. 68.
vessel capsized in. *See* "Limits of Port."

Fastenings
of port insecure—cargo damaged. *See* "Seaworthiness."

Final
delivery of cargo. *See* "Freight, Lump sum."

Final Sailing.
See "Charter-party," p. 50. *Refer* p. 151.
ten days after. *See* "Freight Advanced."
Fire,
inherent vice in cargo. *See* "Freight."
part laden—right to full and complete cargo. *See* "Charter-party," p. 51.
re-insurance against—declarations. *See* "Open Policy."
scuttling to extinguish. *See* "General Average."
water to extinguish, destroying cargo. *See* "Freight."
water pumped into hold. *See* "General Average."
First
and second mortgage. *See* "Mortgage."
First Voyage,
deduction of thirds. *See* "Voyage."
Fishing Vessel,
flare-up light. *See* "Collision," p. 61.
Fitted
for the voyage—perils of the seas. *See* "Seaworthiness."
Flare-up Light.
See "Collision," p. 61.
Flat
sunk in navigable river—flat-owner raising her—lien on cargo. *See* "Salvage," p. 201.
Floating
on cargo—water-logged, not sunk. *See* "Stranded, Sunk, or Burnt."
Fog,
dead-slow. *See* "Collision," p. 70.
excessive speed—sailing ship. *See* "Collision," pp. 66, 70.
fog-horn ahead—stop and reverse. *See* "Collision," p. 75.
mast-head but no side-lights visible. *See* "Collision," p. 62.
master consenting to getting under way. *See* "Compulsory Pilotage."
moderate speed on high seas. *See* "Collision," p. 66.
whistle approaching. *See* "Collision," p. 75.
stop and reverse. *See* "Collision," p. 75.
stop and reverse at once. *See* "Collision," p. 76.
Forced Discharge,
refusal of shipowners to re-ship. *See* "Cargo," p. 33.

Fore-and-Aft Sails only,
shaft broken. *See* "Salvage," p. 206.

Foreign Flag,
British owners—letter of marque: Held unanimously, affirming the decision of Pollock, B., and Manisty and Stephen, JJ., that where a ship is owned by an English company, which for the purpose of carrying on business with a foreign country is registered in that country as a foreign company, and the ship is also registered there, the ship is nevertheless a British ship, as the nationality of a ship unless she is employed by a Government under letters of marque turns upon her ownership, and if a ship which is a British ship is not registered under the Acts, she cannot obtain the advantages given by registration, but her owners cannot avoid liability by omitting to register. *The Chartered Mercantile Bank of India* v. *The Nederlands India Steam Navigation Co., Limited* (Court of Appeal, Nov. 10, 11, 13, 14, 15, 1882, and Jan. 2, 1883, Baggallay, Brett and Lindley, L. JJ.).
British seamen claiming under British law: Held, affirming a decision of Sir Robert Phillimore, that British seamen who sign articles in a foreign country to serve on board a foreign ship become thereby *pro hâc vice* subjects of such foreign country, and subject to the laws of such country, and the British Courts cannot be moved in an action for wrongful dismissal and so forth. *The Leo XIII.* (Court of Appeal, April 25, 1883, Brett and Bowen, L. JJ.).

Foreign Government Mail Packet.
See "Collision," p. 62.

Foreign Law,
bottomry, law governing. *See* "Bottomry."
collision on high seas not governed thereby. *See* "Collision," p. 62.
colonial port, foreign vessel in, necessaries. *See* "Lien."
double proceedings at home and abroad. *See* "Collision," p. 60.
English port, foreign vessel in, necessaries. *See* "Lien."

Foreign Law—*continued.*

foreign Courts deciding contrary to their own laws. *See* "Constructive Total Loss."

foreign vessel in foreign port, under bottomry. *See* "Bottomry."

proof of, imperfect proof. *See* "Bottomry."

Foreign Plaintiff,

damages—stay of payment: Held unanimously, affirming the decision in the Divisional Court, and of the judge at Chambers, that the plea that a foreigner has no property in this country, and that the case in which he succeeded in obtaining damages is set down for a new trial, is not sufficient to substantiate an application for stay of payment. *Premuda* v. *Stewart* (Court of Appeal, April 8, 1886, Lord Esher, M. R., and Lindley and Lopes, L. JJ.).

Foreign Vessel,

British seamen sailing in. *See* "Foreign Flag."

collision with. *See* "Collision," pp. 62, 70.

damage action, seaman's wages. *See* "Lien."

in foreign port, under bottomry. *See* "Bottomry."

necessaries supplied,

colonial port. *See* "Lien."

British port. *See* "Lien."

Forfeiture

of salvage. *See* "Salvage," p. 202.

Foundering,

at anchor in tidal river. *See* "Seaworthiness."

in harbour—sea-cocks open. *See* "Seaworthiness."

Fraudulent

declaration of values. *See* "Open Policy."

possession of bill of lading. *See* "Bill of Lading," p. 19.

registration of shares. *See* "Co-ownership."

valuation. *See* "Value in Policy."

Free from Average,

or claim by jettison. *See* "Special Clauses."

unless general. *See* "Sue and Labour Clause," and p. 88.

Free from Capture or Seizure.

See "Capture and Seizure."

Free of Particular Average (Freight).
See "Constructive Total Loss."
Free of Mortality or Jettison,
seaworthiness. *See* "Cargo Claims," p. 36.
Free of Pratique,
perils preventing, charter cancelled. *See* "Charter-party," p. 48.
Freight,
abandoned vessel. *See* "Abandonment."
advanced. *See* "Freight Advanced."
final sailing. *See* "Charter-party," p. 50.
negligent navigation. *See* "Cargo Claims," pp. 35, 38.
valued policy—interest. *See* "Insurable Interest."
assignment of, by managing owner. *See* "Managing Owner."
mortgagee's rights. *See* "Mortgage."
bill of lading at less than chartered freight: Held unanimously, reversing the decision of Baggallay, J., that the words "other conditions as per charter-party" in a bill of lading bring into the latter only all those clauses and conditions of the charter-party which are not specially dealt with in the bill of lading itself, and that an owner cannot demand from a receiver of cargo a higher rate than that stipulated for in the bill of lading, even although the rate may be less than that in the charter-party. *Gardner & Son* v. *Trechmann* (Court of Appeal, Dec. 16, 1884, Brett, M. R., and Cotton and Lindley, L. JJ.). *Refer* p. 18.
cargo delivered short of destination. *See* "Charter-party," p. 47.
cargo destroyed by fire and water—inherent vice: Held, that where a cargo of coals is shipped, freight to be paid on delivery, and fire breaks out in it spontaneously, and portions are thrown overboard to get at the seat of the fire, and the remainder so wetted and damaged by water poured on it to extinguish the fire that it is discharged and sold at a port of refuge, the freight upon it is wholly lost, and the shipowner is entitled to a contribution in general average for the lost freight sacrificed in the common interest. Held, by inference,

Freight—*continued.*

that if the inherent vice in the cargo is the cause of the sacrifice, no claim can be admitted on its account into general average; owner of cargo cannot take advantage of his own wrong. *Pirie & Co.* v. *Middle Dock Co.* (Queen's Bench, March 28 and April 4, 1881, Watkin Williams, J.).

cargo not realizing amount of. *See* "Bill of Lading," p. 19.

confirmation of insurance after advice of loss: Held unanimously, that where charterers effect a policy of insurance on freight valued at a certain sum on behalf of themselves and those interested, in the usual terms, it is open to the shipowners to ratify such policy, and claim the benefit of it, even after they have received advices of the loss of their vessel, provided they can bring satisfactory evidence that the policy was made for their account, and that they did not know of its existence until after the loss of the vessel, and at once ratified and adopted it. *Williams* v. *North China Insurance Co.* (Court of Appeal, May 30, 31, and June 1, 1876, Cockburn, C. J., Jessel, M. R., Mellish, L. J., and Pollock, B.).

deliver to—looking to them for freight. *See* "Bill of Lading," p. 17.

delivery of cargo short of destination—*pro ratâ* freight. *See* "Charter-party," p. 47, and pp. 3, 182, 239.

derelict—no freight due. *See* "Abandonment."

enhanced value in lieu of. *See* "Cargo ship's account."

free of particular average—suing and labouring. *See* "Constructive Total Loss."

full and complete cargo—short freight. *See* "Charter-party," p. 51.

insurance of—master illegally shipping deck cargo. *See* "Deck Cargo."

insured from the loading thereof on board: Held, that where in a policy of marine insurance on freight the risk is to commence "upon the said goods or freight from the loading thereof on board," and where, the vessel in question being partially loaded, certain

Freight—*continued.*

lighters are delivered alongside with cargo intended to be taken on board, but which lighters, with their contents, become totally lost by perils of the sea, in consequence of which the owners of the vessel lose the freight upon such portion of the cargo, the wording of the policy excludes such risk, and the owner cannot recover his loss from underwriters on freight. *Hopper* v. *Wear Marine Insurance Co.* (Queen's Bench, Feb. 22, 1882, Mathew and Cave, JJ.). *Refer* p. 52.

lien on cargo—charterer not liable. *See* "Charter-party," p. 49.

lien on cargo—general ship. *See* "Lien."

managing owner's commission on. *See* "Managing Owner."

mortgagee's right to—cargo on ship's account. *See* "Mortgage."

outstanding—underwriters' liability. *See* "Chartered Freight."

part paid—lien on bill of lading. *See* "Acceptance in exchange for documents."

payable as per charter-party. *See* "Bill of Lading," p. 18.

port of distress—underwriter's liability. *See* "Sue and Labour Clause;" "Constructive Total Loss."

pro ratâ. *See* "*Pro ratâ* Freight."

profits of sub-charter—seaman's lien. *See* "Seaman's Wages."

salvage of cargo by ship owners—expenses. *See* "Sue and Labour Clause."

voyage stopped by shippers: Held unanimously, reversing the decision of Cave, J., that where a vessel, having laden a cargo under a charter-party, is prevented by shippers from prosecuting her intended voyage (they having heard meantime of the insolvency of the consignees), they are not entitled to have the cargo delivered to them except on payment of the entire freight agreed upon. *Casebourne & Co.* v. *Avery & Co.* (Court of Appeal, July 25, 1887, Lord Esher, M. R., Lindley and Lopes, L. JJ.).

wrecked cargo. *See* "Constructive Total Loss."

Freight advanced,
final sailing. *See* "Charter-party," p. 50.
insurable interest—half cargo lost: Held unanimously, reversing the decision of the Court of Appeal (Cockburn, C. J., Mellor, J., and Amphlett, B., Cleasby and Pollock, BB., dissenting), and affirming a prior decision of the Court of Common Pleas (Bovill, C. J., Brett and Grove, JJ.), that where by the terms of the charter-party half the freight is paid in advance, if a loss of half the cargo takes place, the charterer is not liable for anything further, and the owner, having insured the amount of the freight not so paid in advance, is entitled to recover as for a total loss under his policies. *Allison* v. *Bristol Marine Insurance Co.* (House of Lords, July 2, 1875, Feb. 25, and March 30, 1876, Lords Chelmsford, Hatherley, Penzance, O'Hagan and Selborne).
liable to be repaid if vessel lost through negligence. *See* "Cargo Claims," p. 40.
unpaid and not due—final sailing—port of distress: Held unanimously, affirming the decision of Wills, J., that where a charter-party provides that certain freight shall be payable "ten days after the final sailing of the vessel from her last port," and vessel has started on her voyage, but not gone beyond the limits of the port as understood by shipowners and merchants, before an accident happens, which renders it necessary that she should put back for repairs, she has not sailed from the port within the meaning of the charter-party, and the freight is not payable. *The "Garston" Ship Co.* v. *Hickie & Co.* (Court of Appeal, July 3, 1885, Brett, M. R., and Baggallay and Bowen, L. JJ.). *Refer* p. 50.
negligent navigation. *See* "Cargo Claims," p. 40.
valued policy—interest. *See* "Insurable Interest."

Freight, Lump-sum,
jettison and sale of part cargo—port of distress: Held, unanimously, reversing the decree of the Court of Admiralty, that where a vessel takes the ground, and

Freight, Lump sum—*continued.*

negligence of pilot is not directly proved, and subsequently springs a slight leak, which, as a consequence of perils insured against, becomes so serious as to necessitate jettisoning a portion of the cargo, and selling a further portion at a port of distress, no deduction can be made from the lump-freight because part of the goods are not delivered, as, although the lump-sum is called freight, both in the charter and bills of lading, it is more properly a sum paid for the use and hire of the ship on the agreed voyages, and that the clause making the freight payable only "on true and final delivery of the cargo at the said port of discharge," does not necessarily mean that the whole cargo originally shipped must be delivered. *The Norway* (Privy Council, July 20, 1865, Right Hon. Knight-Bruce and J. T. Coleridge, and E. V. Williams, L. JJ.).

Fresh and Salt Water,
draught of water. *See* "Charter-party," p. 50.

Frost,
preventing loading—canal. *See* "Lay-days," p. 139.
river. *See* "Lay-days," p. 137.

French Pilotage,
See "Compulsory Pilotage."

Fuel,
for donkey-pump. *See* "General Average."

Full and Complete Cargo,
delay in loading—accident. *See* "Charter-party," p. 51.
say about —— tons. *See* "Charter-party," p. 51.
spare bunker space. *See* "Charter-party," p. 51.
vessel lost during loading. *See* "Contract of Sale and Purchase."

Full Interest admitted.
See "Illegal Insurance."

Full Ship,
all on board delivered. *See* "Short Delivery," and p. 52.

Full Speed ahead,
contrary to regulations. *See* "Collision," pp. 63, 66.

General Average,

its nature: Held, that the right to general average is not founded upon contract, or the relations created by contract, but upon a rule of law applicable to all who have interests exposed to some common danger, threatening the safety of the whole, and upon the ancient maritime law, which was as follows:—"If for the sake of lightening a ship a jettison of merchandise is made, *that which is given for all shall be made good by a contribution of all.*" *Pirie & Co.* v. *Middle Dock Co.* (Queen's Bench, March 28, and April 4, 1881, Watkin Williams, J.).

act of, necessitating putting into port. *See* "Port of Distress."

amount underwritten already paid. *See* "Sue and Labour Clause."

auxiliary screw—forced steaming—temporary repairs: Held, reversing the decision of Mellor, J., and a jury, that where an auxiliary screw vessel is by perils of the sea disabled from sailing, and the master, in order to prevent the heavy expense of refitting and repairing abroad, decides to come home under steam, the cost of the coal and expenses of calling at coaling ports on the way home are not subjects of general average. The shipowners, by their contract with the freighters, are bound to give the use of the auxiliary screw, their vessel being so fitted, and to provide fuel for the engine. If the master can, by the expenditure of a small sum in temporary repairs and coals, bring the ship and cargo safely home, it is his duty to do so; and the Court wished to guard against being supposed to sanction the notion that in a case like this the shipowners could have charged the owners of the cargo with any part of the expenses of unshipping and warehousing the cargo, supposing the master had adopted this unwise and imprudent course. There could, therefore, be no availing plea, on the ground of substituted expense, for making these disbursements the subject of general average contribution. *Wilson* v. *Bank of Victoria* (Queen's Bench, Feb. 12, 1867, Blackburn, J.).

General Average—*continued.*

cargo destroyed by fire and water. *See* "Freight."

cargo owners refusing to contribute to. *See* "Seaworthiness." *Refer* p. 153.

contribution of specie: Held, that where specie has for safety been landed from a vessel stranded in a dangerous position, the specie, being in safety, is not liable to contribute in general average towards a subsequent sacrifice by jettison and so forth. *Royal Mail S. P. Co.* v. *British Bank of Rio de Janeiro* (Queen's Bench, July 21, 1887, Wills and Grantham, JJ.).

contribution to cost of raising sunken vessel. *See* "Constructive Total Loss."

defective machinery. *See* "Machinery Claims."

fire and consequences excepted. *See* "Bill of Lading," p. 18. *Refer* p. 124.

free from average unless general. *See* "Sue and Labour Clause."

fuel for donkey-boiler: Held unanimously, affirming the decision of Queen's Bench Division (Lush and Mellor, JJ.), that although an owner of a vessel fitted with a donkey-boiler for pumping vessel, is bound to have on board a reasonable supply of fuel, having regard to the nature of the voyage, the season of the year, the quality of the cargo, the condition of the ship, and what experience has shown to be prudent to provide against, under these conditions, he is not bound to have on board enough for every possible emergency; and, therefore, if as a consequence of special and extraordinary perils the supply of fuel is exhausted, and it becomes necessary for the safety of all interests concerned to cut up and use for fuel spare spars and part cargo, this is a general average sacrifice, and recoverable as such, providing the supply of fuel on leaving port was a reasonable supply for the donkey-boiler for pumping purposes. *Robinson* v. *Price* (Court of Appeal, April 7, 1877, Lord Coleridge, C. J., Bramwell and Brett, JJ. A.).

impending loss of thing sacrificed: Held unanimously, affirming the decision of Pollock, B., that the liability

General Average—*continued.*

for general average is not done away with by showing that perhaps there would have been an immediate total loss, if it is shown that circumstances exist which make it reasonable to sacrifice part for the whole, and if part is intentionally sacrificed, that is a general average sacrifice and a general average loss. *Whitecross Wire and Iron Co., Limited* v. *Savill* (Court of Appeal, March 24, 27, and 28, 1882, Lord Coleridge, C. J., Brett and Holker, L. JJ.).

impending loss of thing sacrificed: Held unanimously, reversing the decision of the Common Pleas (Grove and Lopes, JJ.), that where a mast is in such a condition, through the giving way of the rigging, and the violence of the storm, and the practical impossibility of the storm ceasing in time to save the mast, that it must have been lost whether the ship was saved or not, the cutting away of the mast is no sacrifice, and therefore has caused no loss to the shipowner, and he has no claim for general average, even although the mast, if not cut away, imperilled the whole adventure. *Shepherd* v. *Kottgen* (Court of Appeal, Nov. 23, 1877, Bramwell, Brett and Cotton, L. JJ.).

impending loss of thing sacrificed: Held unanimously, that where an iron mast settles down, and the rigging becomes slack, and the master is afraid of the mast going through the vessel's bottom, and so cuts it away, the mast had not ceased to be valuable as a mast, and there was therefore a sacrifice entitling the owner to general average contribution. *Corrie* v. *Coulthard* (Court of Appeal, Jan. 17, 1887, Cockburn, C. J., Sir W. B. Brett and Sir R. Baggallay).

jettison of deck cargo—exception to liability: Held unanimously, reversing the judgment of Cave and Day, JJ., that a clause in the charter-party to the effect that a deck-load of timber is to be at merchant's risk, would doubtless protect the shipowner in a case of improper jettison, or in case of collision or stranding, by reason of the negligence of the captain or crew, but it does not preclude the owners of cargo from recovering gene-

General Average—*continued.*

ral average contribution if the cargo be carried on deck by the custom of the trade and jettisoned. *Burton* v. *English* (Court of Appeal, Dec. 17 and 18, 1883, Brett, M. R., and Baggallay and Bowen, L. JJ.).

jettison of deck cargo. *See* "Deck Cargo."

Liverpool average bond: Held unanimously, confirming the decision of Mathew and A. L. Smith, JJ., that whilst shipowners have a lien on cargo for general average contribution, a local custom cannot give them the right to demand a fixed percentage, as stipulated for in the Liverpool bond (10 per cent.); that they may only require a reasonable deposit or guarantee, in their option, fixed according to the circumstances in each particular case. *Huth & Co.* v. *Lamport and Holt* (Court of Appeal, Feb. 3, 1886, Lord Esher, M. R., Lindley and Lopes, L. JJ.).

port of adjustment. *See* below and next page.

port of distress—wear and tear. *See* "Machinery Claims."

reloading cargo at port of distress. *See* "Port of Distress."

salvage or towage services—excessive amount: Held, confirming the decision of Grove and Stephen, JJ., that if an owner pay, or enter into an agreement to pay, an excessive amount for salvage services, he cannot recover more than a reasonable amount in general average. *Ocean Steamship Co.* v. *Anderson, Tritton & Co.* (Court of Appeal, July 30, 1886, before Lord Esher, M.R., and Bowen and Fry, L. JJ.).

shipowner's agency—salving cargo. *See* "Sue and Labour Clause."

termination of voyage at intermediate port—port of adjustment: Held, that an average adjustment cannot be made at a port prior to port of discharge, unless it can be proved that the voyage terminated there, either by agreement or necessity, *i. e.*, the occurrence of circumstances beyond the control of the owner, and such as rendered the completion of the voyage on the terms

General Average—*continued.*

originally agreed upon physically impossible, or so clearly unreasonable as to be impossible in a business point of view. *Hill* v. *Wilson* (Common Pleas, March 29, 1879, Lindley, J.).

underwriter liable to owner of cargo for jettison—value allowed in general average less than policy value: Held unanimously, that where goods insured for a certain sum are jettisoned in transit, the jettison being a general average act, the owner of the goods is entitled to recover from the underwriter the full insured value thereof, without regard being had to the value allowed in general average, and the owner of the goods is entitled to immediate payment as for a total loss, the custom on the part of owners of cargo to collect the general average first, being a custom for the convenience of the parties simply, and not a binding custom. *Dickinson* v. *Jardine* (Common Pleas, May 28, 1868, Bovill, C. J. and Willis and Smith, JJ.).

values for adjustment—putting back to port of shipment: Held unanimously, that where a vessel strands and returns to her port of departure after jettisoning part cargo, and the bulk of the cargo remaining on board is found unfit to be sent on to its destination, and the shipper refuses to supply another cargo, the adventure terminates accordingly at the said port of shipment, and the average is stated in accordance with the law of such port. The value to be made good in average is not the value at the time of the jettison, because, if the ship went to the bottom after the jettison, there would be no contribution, but the value the goods would have had if they had arrived and had not been thrown overboard, and the value to contribute is the selling price at the port of adjustment. *Fletcher* v. *Alexander* (Common Pleas, April 27 and 30, 1868, Bovill, C. J., and Byles and Smith, JJ.).

value of cargo at shipment: Held unanimously, confirming the decision of Grantham, J., at Liverpool Assizes, that if a merchant having been asked for the value of cargo for general average, replies, giving a value

Gen.

General Average—*continued.*

"at shipment," he thereby agrees to accept a calculation of general average on the basis of that estimate, and cannot subsequently claim to have the value reduced to the actual figure at which the cargo sold at port of destination. *The Garston Ship Co.* v. *Hickie and others* (Court of Appeal, Oct. 28, 1886, Lord Esher, M. R., Lindley and Lopes, L. JJ.).

water pumped into hold to extinguish fire: Held, that the value of goods damaged by water pumped into a vessel's hold to extinguish a fire, and not damaged by the fire, must be admitted into a general average statement, and that the owners of the vessel are not relieved from their liability to contribute thereunder by clauses in their bill of lading, including damage by fire in the excepted perils. *Schmidt* v. *The Royal Mail Steamship Co.* (Queen's Bench, May 12, 1876, Blackburn and Lush, JJ.).

water pumped into hold to extinguish fire: Held, that where goods on board a vessel are injured by water used to extinguish a fire, the owner of the vessel is bound to give assistance in the preparation of an average statement, notwithstanding clauses in his bill of lading exempting him from all liability for damage to goods which is coverable by insurance, that such clauses only qualified an owner's liability as carriers, and did not preclude contribution to general average. *Crooks* v. *Allen* (Queen's Bench, Nov. 23 and Dec. 20, 1879, Lush, J.).

water pumped into hold to extinguish fire: Held unanimously, affirming the decision of Pollock, B., that where water is poured down a vessel's hold to extinguish a fire, and the cargo is thereby damaged, the shipowners are liable to a claim for general average contribution for the damage to cargo caused by water, and the fact that the vessel is in a port of destination and partially discharged does not affect the question. *Whitecross Wire and Iron Co., Limited* v. *Savill* (Court of Appeal, March 24, 27, and 28, 1882, Lord Coleridge, C. J., and Brett and Holker, L. JJ.). *Refer* pp. 18, 114.

General Ship,
shippers without knowledge of charter. *See* "Cargo Claims," p. 41. *Refer* p. 144.

Getting underway in Fog.
See "Compulsory Pilotage."

Globe Light,
indicating position. *See* "Collision," p. 57.

Good Order and Condition.
See "Cargo Claims," p. 45.

Government Form of Charter.
See "Salvage," pp. 198, 199, and p. 55.

Government Ship.
See "Salvage," p. 198.
Board of Trade vessel. *See* "Salvage," p. 195.
chartered transport. *See* "Salvage," pp. 198, 199.
foreign mail packet. *See* "Collision," p. 62.

Government Time Charter,
mulct of hire—inefficient—expiry of policy. *See* "Chartered Freight."

Gross Negligence.
See "Bottomry."

Grounding,
not a strand. *See* "Stranded, Sunk, or Burnt."

Gulf of St. Lawrence,
"no St. Lawrence." *See* "Warranties."

Half Freight
in advance, part cargo destroyed. *See* "Freight advanced."

Harbour,
foundering in, sea-cocks left open. *See* "Seaworthiness."

Harbour Authorities,
ballast or inward cargo ship: Held, that a vessel discharging her cargo at a port in England, and there taking ballast to go to Liverpool to load for the West Indies, does not cease to be a vessel arriving in ballast within the meaning of the Mersey Docks Acts Consolidation Act, by reason of her also taking on board a bale of cotton and a few other articles, and that she

Harbour Authorities—*continued.*

is not on that account to be entitled to rank as a vessel trading inwards within the meaning of such Act. *De Garting* v. *The Mersey Docks and Harbour Board* (Common Pleas, Nov. 22, 1877, Grove and Lindley, JJ.).

damage while under orders of harbour-master: Held unanimously, affirming the decision of Sir James Hannen, that where a vessel is, in obedience to bye-laws, being beached in a harbour under the direction of the harbour-master, and damage is occasioned to her by the negligence of the harbour-master in giving an improper order, the Harbour Commissioners are liable for the damage thereby occasioned, even although the orders were given while the vessel was passing through waters properly outside the limits of the authority of the Harbour Commissioners. *The Rhosina* (Court of Appeal, June, 16, 1885, Brett, M. R., and Baggallay and Bowen, L. JJ., with Nautical Assessors).

notified of wreck—duty of lighting. *See* "Sunken Wreck."

removal of wreck by—expenses. *See* p. 186.

striking sunken wreck, improperly lighted. *See* "Sunken Wreck."

unsafe mooring berth: Held, that if a harbour master orders, or agrees to permit, a vessel to proceed to a berth which is proved to have been unsafe, and as a consequence the vessel sustains injury, the harbour authorities are liable to make good such injuries. *The Castledale* (York Assizes, July 29, 1887, Mathew, J.).

wreck damaging pier. *See* "Damage."

Hatches,

survey of, full ship. *See* "Short Delivery."

Heating

of one part of cargo by another. *See* "Cargo Claims," p. 41.

High Seas,

collision on, foreign ship. *See* "Collision," p. 62.

speed on, fog. *See* "Collision," p. 66.

Hire of Ship,

general ship. *See* "Lien," and p. 41.

Holders
of bills of lading liable for freight, &c. *See* "Bill of Lading," pp. 15 to 17.

Hostilities,
preventing salvage of cargo. *See* "Capture and Seizure."
threatened, discharge prevented. *See* "Lay Days," p. 138.
war cancellation clause in charter. *See* p. 53.

Hove-to,
forereaching one and a-half knots. *See* "Collision," p. 62.

Hypothecation
of freight. *See* "Managing Owner;" "Mortgage."

Ice,
delivery of cargo short of destination. *See* "Charter-party," p. 47.
preventing loading. *See* "Lay Days," pp. 137, 139.

Ignorance
of danger of mixing certain cargoes. *See* "Cargo Claims," p. 41.

Illegal
shipment of deck cargo by master—barratry. *See* "Deck Cargo."

Illegal Insurance.
"An Act to regulate Insurance on Ships belonging to the Subjects of Great Britain, and on the Merchandise or Effects laden therein (19 Geo. 2, c. 37, s. 1).—Whereas it hath been found by experience that the making assurances, interest or no interest, *or without further proof of interest than the policy*, hath been productive of many pernicious practices, whereby great numbers of ships, with their cargoes, have either been fraudulently lost and destroyed or taken by the enemy in time of war; and such assurances have encouraged the exportation of wool and the carrying on many other prohibited and clandestine trades, which by means of such assurances have been cancelled, and the parties concerned secured from loss, as well to the

Illegal Insurance—*continued.*

diminution of the public revenue as to the great detriment of fair traders; and by introducing a mischievous kind of gaming, or wagering, under the pretence of assuring the risk on shipping and fair trade, the institution and laudable design of making assurances hath been perverted; and that which was intended for the encouragement of trade and navigation has, in many instances, become hurtful of and destructive to the same. For remedy whereof, be it enacted, &c., that from and after the 1st Aug. 1746, no assurance or assurances shall be made by any person or persons, bodies corporate or politick, on any ship or ships belonging to His Majesty, or any of his subjects, or on any goods, merchandise, or effects, laden or to be laden on board of any such ship or ships, *interest or no interest, or without further proof of interest than the policy*, or by way of gaming or wagering, *or without benefit of salvage to the assurer*, and that every such assurance shall be null and void to all intents and purposes."

"interest admitted:" Held unanimously, affirming the decision of Pollock, B., that the words, "full interest admitted" inserted in a policy of insurance made such policy a "wagering" policy, and, consequently, one that could not be sued upon. *Berridge* v. *The "Man on" Marine Insurance Co., Limited* (Court of Appeal, Jan. 18, 1887, Brett, M. R., Bowen and Fry, L. JJ.).

policy unstamped not illegal. *See* "Policy unstamped."

without benefit of salvage—profits: Held unanimously, that although an insurance on profits is perfectly legal, the addition to the policy of the words "without benefit of salvage," even if made by the underwriter, voids the policy under 19 Geo. 2, c. 37, s. 1, and such a policy cannot then be sued upon. *Mortimer* v. *Broadwood* (Common Pleas, May 3, 1869, Bovill, C. J., and Smith and Brett, JJ.).

without benefit of salvage—open policy: Held, that an open policy of insurance on profits and commission, if containing a clause "without benefit of salvage, but

Illegal Insurance—*continued.*

to pay loss on such part as does not arrive," is within 19 Geo. 2, c. 27, and is void because of the words "without benefit of salvage," even although it can be proved that they were not wager policies. *Allkins* v. *Jupe* (Common Pleas, April 19, 1877, Grove and Lindley, JJ.).

Immediate Danger.

See "Salvage," pp. 200, 206.

Impending Loss,

of thing sacrificed. *See* "General Average."

Improper Lights,

master's duty—pilot's orders. *See* "Compulsory Pilotage."

Improper Navigation,

collision—steering gear not acting. *See* "Limitation of Liability." *Refer* pp. 63, 72.

port improperly fastened. *See* "Indemnity Association."

Improper Stowage.

See "Cargo Claims," pp. 41, 43, 45.

In Distress,

See "Distress."

on the shore. *See* "Barge not propelled by oars."

Inception of Risk,

including risk of craft, trans-shipment, landing, and re-shipment: Held unanimously, affirming the decision of the Court of Common Pleas (Willes and Keating, JJ.), that a policy of insurance containing the words "including risk of craft, trans-shipment, landing, and re-shipment," does not cover the risk of goods warehoused for the purpose of being packed or pressed, or to await a vessel's arrival. *Australasian Agricultural Co.* v. *Saunders* (Exchequer, June 19, 1875, Bramwell, B., Blackburn, Lush and Quain, JJ., Pollock and Amphlett, BB.). *Refer* pp. 12, 92.

lighters alongside lost. *See* "Freight."

re-insurance declarations. *See* "Open Policy."

Incorrect Adjustment,

recovery of amount overpaid. *See* "Average adjustment."

Indemnity Association,
cargo claims—improper navigation—port improperly fastened: Held, that a clause in the rules of an indemnity association, which included damage to goods or merchandise "caused by the improper navigation of the ship carrying the goods or merchandise, or of any other ship (but not from damage caused by bad stowage)," covered the case of damage to cargo by leakage through an insecurely or improperly fastened port which had been used in loading cargo, and that owners were entitled to be indemnified by the association for the amount of such damage paid to owners of cargo. *Carmichael & Co.* v. *Liverpool Sailing Shipowners' Mutual Indemnity Association* (Queen's Bench, Dec. 13, 1886, before A. L. Smith and Wills, JJ.).

Indorsees
liable for freight. *See* "Bill of Lading," pp. 15 to 19.

Indorsees and Consignees,
See "Bill of Lading."

Inevitable Accident,
cables parting. *See* "Collision," p. 63.
steering gear not acting. *See* "Collision," pp. 63, 72.

Inevitable Collision,
error of judgment not then contributory negligence. *See* "Collision," p. 61.

Inevitable Loss of Thing Sacrificed.
See "General Average."

Infectious Disease,
loan of navigator. *See* "Salvage," p. 201.

Infringement of Regulations.
See "Collision."

Inherent Vice,
cargo destroyed by fire. *See* "Freight."
ignorance thereof. *See* "Cargo Claims," p. 41.
machinery—wear and tear. *See* "Machinery Claims."
steering gear not acting. *See* "Collision," pp. 63, 72, and p. 151.

Inspection
by Trinity Masters. *See* "Collision," p. 64.

Inspection of Repairs,
overlooking bad workmanship. *See* "Ship Repairers."

Insufficient
answers to interrogatories. *See* "Interrogatories."
ballast—jettison of cattle. *See* "Cargo Claims," p. 36.
coal—towage interrupted. *See* "Tug and Tow."
dunnage—seaworthiness. *See* "Cargo Claims," p. 41.
power—towing too many vessels. *See* "Tug and Tow."

Insurable Interest.
See "Freight;" "Freight Advanced."
advanced freight—valued policy: Held unanimously, reversing the decision of the Court of Common Pleas (Denman, J.), that where charterers effect an insurance on freight, valued at a sum inclusive of gross freight and advances, including chartering commission, and the owner insures the gross freight and recovers the amount thereof after loss, and the charterers, who have insured their advances by a separate policy, recover the amount thereof, the shipowner cannot recover anything further from the underwriters with whom the charterers effected the insurance for an amount greater than the gross freight, on the plea that it was valued in the policy for an amount which they were entitled to insure and have not recovered. Under a valued policy it may be shown what it was that was intended to be valued, with a view to disputing interest in the whole subject of valuation, although the amount of the valuation itself can be disputed only on the ground of fraud. *Williams* v. *The North China Ins. Co.* (Court of Appeal, May 30, 31, and June 1, 1876, Cockburn, C. J., Jessel, M. R., Mellish, L. J., and Pollock, B.).

Insurance Broker,
agency of. *See* "Concealment."
omitting to use telegraph. *See* "Broker omitting to telegraph."

Insurance in Excess of Value.
See "Value in Policy."

Insurance Premium,
See "Mutual Insurance;" "Necessaries;" "Premium."
included in demurrage allowance. *See* "Demurrage."
Insured Value,
See "Value in Policy."
exceeding value allowed in general average. *See* "General Average."
Interest,
added to 8*l.* per ton. *See* "Limitation of Liability."
admitted. *See* "Illegal Insurance."
excessive in bottomry bond. *See* "Bottomry."
or no interest. *See* "Illegal Insurance."
without further proof of. *See* "Illegal Insurance."
Intermediate Port,
cargo-owner asking delivery of damaged cargo. *See* "*Pro ratâ* Freight."
terminating voyage at. *See* "General Average."
Interpleading,
holders of one part of bill of lading claiming delivery. *See* "Bill of Lading," p. 17.
Interrogatories,
answers to. *See* "Managing Owner."
improper answer. *See* "Collision," p. 69.
insufficient answer: Held unanimously, reversing the decision of Field and Cave, JJ., and affirming a prior decision of Williams, J., that in an action by owners of cargo against shipowners, interrogatories may be administered to the owners of the ship inquiring respecting the details of the navigation thereof at the time the accident happened, and the shipowner is not excused from answering such interrogatories on the ground that he has no personal knowledge of the facts inquired about, if his servants or agents possess the necessary information, and it has come to their knowledge in the ordinary course of business. *Bolckow, Vaughan & Co.* v. *Fisher* (Court of Appeal, Nov. 16, 1882, Baggallay, Brett, and Lindley, L. JJ.).
Inward Bound,
Mersey Acts—cargo or ballast. *See* "Harbour Authorities."

Jettison,

after part cargo salved, liability of salved cargo. *See* "General Average."

deck cargo, at shipper's risk. *See* "General Average."

deck cargo, cattle. *See* "Cargo Claims," p. 36; "Deck Cargo."

deck cargo, improper jettison of. *See* "General Average."

deck cargo, wood goods. *See* "Deck Cargo;" "General Average."

lighten vessel, common safety. *See* "General Average."

part cargo. *See* "Freight, Lump sum."

underwriters liable for total loss in case of. *See* "General Average."

value of thing jettisoned. *See* "General Average."

Jettison or Leakage,

free from claim arising from. *See* "Special Clauses."

Judge and Jury,

judge refusing to put questions to jury. *See* "Master's Agency."

jury finding negligence, evidence contradictory. *See* "Cargo Claims," p. 44.

jury to decide question of damages. *See* "Conference Lines."

jury to decide questions of seaworthiness. *See* "Seaworthiness."

master's right to jury. *See* "Master's Wages, &c."

salvors disagreeing, right to jury. *See* "Salvage," p. 197.

Keel,

duty to dredge in river with anchor down. *See* "Collision," p. 72.

Laches

of master, not exercising lien at once. *See* "Master's Wages, &c."

Landlord

of building yard arresting ship. *See* "Lien."

Lapse of Policy
during voyage. *See* "Time Policy."
prior to the commencement of repairs. *See* "Chartered Freight."
without notice. *See* "Mutual Insurance."

Last on Board
liable for demurrage—different consignees. *See* "Lay Days" p. 135.

Last Port,
ten days after sailing. *See* "Freight Advanced."

Late Delivery,
of goods after collision. *See* "Cargo Claims," pp. 40 to 43.

Latent Defect,
machinery—seaworthiness. *See* "Salvage," p. 204.
shaft. *See* "Seaworthiness," and p. 153.
steering gear. *See* "Collision," pp. 63, 72, and p. 151.
telegraph cable. *See* "Seaworthiness."

Launch,
not a ship. *See* "Limitation of Liability."
precautions before. *See* "Collision," p. 64.
vessel anchored in way of. *See* "Collision," p. 64.

Lay Days,
accidents beyond charterer's control—snowstorm: Held, that where in a charter-party there was an exception in charterer's favour to the loading within a stipulated time "in case of riot, strikes, or any other accident beyond their control, and which may prevent or delay her loading," the fact of a severe snowstorm interfering with and interrupting the bringing of the cargo to the place of shipment did not constitute an exception within the meaning of the clause, a snowstorm not being an accident. *Fenwick* v. *Schmalz* (Common Pleas, Feb. 12, 1868, Willes and M. Smith, JJ.).
all other conditions as per charter-party: Held unanimously, affirming the decision of Lush, J., that where bills of lading contain the clause "all other conditions as per charter-party," and according to the charter-party demurrage has become due, the owner of the

Lay Days—*continued.*

goods last on board is liable on his bill of lading for the demurrage, even although the delay giving rise thereto has not been caused through any fault of his, but because receivers of cargo stowed above his goods did not take delivery fast enough. *Porteous* v. *Watney* (Court of Appeal, May 4, 16, 17, and July 2, 1878, Brett, Cotton, and Thesiger, L. JJ.).

as near thereto as she may safely get: Held unanimously, affirming the decision of the Court of Appeal (James, Brett, and Cotton, L. JJ.), which reversed a prior decision of Jessel, M. R., that although the primary obligation of a ship under charter is to proceed to the place and dock (if any) named in the charter-party, it is not necessary in order to free the ship from this obligation, and to substitute an alternative destination, that she should be prevented by a permanent physical obstruction, but if the obstruction is such as to cause an unreasonable delay in a mercantile sense she becomes so released. For example, if a steamship be chartered to discharge in a particular dock "or so near thereto as she may safely get and lie always afloat . . . the cargo to be received at port of discharge as fast as steamer can deliver," and the dock is so crowded that the authorities refuse to admit her, and cannot promise to do so for a month at least, the steamer is to be taken to have got "as near thereto as she can safely get" when she is moored outside the said dock, and the merchant is bound to take delivery of the cargo there into lighters or to name another near dock. When the parties to a mercantile contract, such as that of affreightment, have not expressed their intentions in a particular way, a court of law, in order to ascertain the implied meaning of the contract, must assume that the parties intended to stipulate for what is fair and reasonable, having regard to the common interests and to the main objects of the contract. *Dahl & Co.* v. *Nelson, Donkin & Co.* (House of Lords, Nov. 16, 17, 23, 24, 1880, and Jan. 13, 1881, Lord Chancellor Selborne, Lords Blackburn and Watson).

Lay Days—*continued.*

at all times of the tide: Held, that where a charter-party provides that a vessel shall proceed to Sharpness "or so near thereto as she may safely get, at all times of the tide and always afloat," the ship is not bound to reach a place within the ambit of the port of Sharpness, and the shipowner is relieved by the words "at all times of the tide" from any liability to wait a reasonable time for the tide, that, therefore, he is entitled to demurrage on the basis of the voyage having terminated on the ship's arrival at the nearest place to Sharpness that she could reach with full cargo on board in the state of the tides prevailing at the time of her arrival. *Horsley* v. *Price & Co.* (Queen's Bench, June 9 and 16, 1883, North, J.). *Refer* pp. 48, 53.

custom of port: Held unanimously, affirming the decision of Pollock, B., that when a custom of the port of discharge, not inconsistent with the express wording of the charter-party, is clearly proved to the effect that a vessel with so many running days, Sundays excepted, to load and discharge, usually discharges a part of her cargo sufficient to lighten her at one place within the port and thereafter proceeds to another place within the said port there to complete her discharge, the time occupied in discharging at both places, but not the time occupied in shifting from one place to another, to count as lay days, such custom is binding upon both parties to the contract of affreightment, and lay days count only in accordance with such custom. *Nielsen & Co.* v. *Wait, James & Co.* (Court of Appeal; Nov. 3, 1885, Brett, M. R., and Cotton and Lindley, L. JJ.).

custom of port—discharge with all dispatch: Held, that where in a charter-party it is stipulated that the cargo shall be discharged "according to the custom of the port for steamers," if a custom is alleged which is unreasonable, it is for that reason void in law; as for instance, where grain merchants at a certain port have taken delivery of cargoes of grain from Indian ports at the rate of 1,000 quarters per day average, for three years past, since the importation of Indian grain com-

Lay Days—*continued.*

menced at the port, such a custom is unreasonable and unjust, and therefore void; and further, that the words in the charter mean, according to the usage and mode and manner in which cargoes are discharged, and cannot bear the meaning sought to be put upon them. Held (*per* finding of the jury), that a usage to take delivery of cargoes at the rate of 1,000 quarters per day, had not become a valid custom in the course of three years. *Taylor, Abrahams* v. *Budgett* (Bristol Assizes, Aug. 2 and 3, 1886, Manisty, J.).

detention by ice not reckoned as laying days: Held unanimously, affirming the decision of the Queen's Bench (Cockburn, C. J., Blackburn, Mellor, and Shee, JJ.), that where in a charter-party it is stipulated that detention by ice is not to be reckoned in the laying days, that stipulation covers detention consequent upon a river being frozen over by which the cargo must necessarily be brought to the port, the port itself having no warehouses or accommodation of any kind for the storage of cargoes, the conveyance by river must be considered as a part of the act of loading, and whenever access to the ship from one of the storing places from which the cargo was conveyed direct to the ship was interrupted, the exception in the charter-party would apply; the fact of there being no storage at the port itself being well known to persons engaged in trade with the port, must be taken as the basis of the contract, even although unknown to the owner. *Hudson* v. *Ede* (Exchequer, Feb. 4 and May 11, 1868, Kelly, C. B., Willes, Keating, and M. Smith, JJ., Bramwell and Channell, BB.). *Refer* p. 139.

discharge as fast as custom of port will allow: Held unanimously, affirming the decision of Field, J., that a custom of the port of discharge limiting the number of tons to be discharged must be clearly proved, and if it is not proved that any custom exists as to the discharge of the particular cargo in question, the law will imply a contract of discharge within a reasonable time, or, which is the same thing, with due diligence.

Lay Days—*continued.*

Fowler v. *Knoop* (Court of Appeal, Nov. 18, 19, and Dec. 10, 1878, Bramwell, Brett and Cotton, L. JJ.).

discharge at a wharf—wharf engaged: Held, that where in a charter-party a vessel is to proceed to a particular wharf, or so near thereto as she may safely go, and there deliver her cargo, if on arrival the master finds the wharf occupied by another vessel, and it is not a condition of the contract that he shall wait turn to unload, he is justified in taking his vessel into the nearest available berth, and there delivering his cargo, and the cargo owners are liable for expenses in connection therewith. *Smith* v. *Wallace* (Queen's Bench, March 5, 1887, Denman, J., and a Special Jury).

discharge at railway wharf: Held, that the place of destination under a charter-party containing this clause is the railway wharf, and that a vessel's lay days do not commence until she is brought alongside thereof. *Murphy* v. *Coffin & Co.* (Queen's Bench, Dec. 13, 1883, Mathew and Day, JJ.).

discharge in the customary manner: Held unanimously, affirming the decision of the Queen's Bench (Cockburn, C. J., Blackburn, Mellor, Lush and Hannen, JJ.), that where a charter-party is silent as to the number of days to be occupied in the discharge of the cargo, the contract implied by law is that both merchant and shipowner shall use reasonable dispatch; and if a delay in discharging the cargo be caused by some unforeseen occurrence over which the merchant has no control, as, for instance, a prohibition by the port authorities in consequence of threatened hostilities, he is not responsible for the loss caused by such delay. *Ford* v. *Cotesworth* (Exchequer, June 18, 1870, Kelly, C. B., Keating, Montague Smith and Brett, JJ., Martin, Channell and Cleasby, BB.).

discharge with all dispatch according to custom of port: Held unanimously, affirming the decision of the Court of Appeal (Brett and Thesiger, L. JJ., Cotton, L. J., dissenting) and a prior decision of Kelly, C. B., and Hawkins, J., that where in a charter-party it is pro-

Lay Days—*continued.*

vided that the ship is to be discharged with all dispatch according to the custom of the port, and the vessel arrives at the port of discharge at a time when it is very full of shipping, and in consequence of an insufficiency of suitable lighters is detained for over a month waiting her turn to discharge, the discharge by means of lighters being according to the custom of the port, the impediment to the due discharge of the ship is an impediment inseparable from the said custom, and the charterer is not liable for demurrage. Although the charterer under the before-named clause is bound to discharge the cargo within a reasonable time, the question whether the time is reasonable or unreasonable must be judged with reference to the means and facilities available at the port, and to the facilities and course of business at the port. *Postlethwaite* v. *Freeland* (House of Lords, May 7, 10, 11, and June 7, 1880, Lord Chancellor Selborne, Lords Hatherley and Blackburn). *Refer* p. 141.

"dock as ordered on arrival, if sufficient water": Held, that where a charter-party provides that "the ship shall proceed to a port to discharge in a dock as ordered on arriving, if sufficient water, or so near thereunto as she may safely get always afloat," it is incumbent upon the charterer to name a dock in which there is "sufficient water" for the ship to enter "on arriving," and that the owner is not bound to wait till the tides permit the entry of his ship into the named dock. *Allen* v. *Coltart & Co.* (Queen's Bench, May 29, and June 12, 1883, Cave, J.). *Refer* p. 137.

frost preventing loading: Held unanimously, affirming a decision of the Court of Appeal (Brett, M. R., and Lindley and Fry, L. JJ.), reversing a decision of Pollock, B., that where in a charter-party the charterer is not liable for demurrage if the loading is prevented by frost, this exception applies only to frost which prevents the actual loading of the cargo, or which prevents the cargo from being obtained from the only place where, according to known mercantile custom, it can be obtained, and not to frost which prevents cargo

Lay Days—*continued.*

being brought from a particular place by canal, even though only a short distance, when other modes of conveyance are available, or the same description of cargo obtainable from other places. *Grant & Co.* v. *Coverdale, Todd & Co.* (House of Lords, March 21 and 24, 1884, Lord Chancellor Selborne, Lords Watson, Bramwell and Fitzgerald). *Kay* v. *Field* confirmed.

mornings and evenings, whole days. *See* Idem, p. 141.

prompt dispatch in turn: Held unanimously, reversing a decision of the Court of Queen's Bench for Lower Canada, and reviving a prior decision of the judge of the Superior Court, that where in a charter a vessel is to have prompt dispatch in turn, the meaning of such a clause is, that charterers shall have the coals ready; and where delay has taken place because the production of the mines did not equal the facilities of the port, prompt dispatch not having been given, the owners are entitled to demurrage. *Elliott* v. *Lord* (Privy Council, Feb. 4 and March 8, 1883, Right Hon. Lord Blackburn, Sir Barnes Peacock, Sir Robert Collier, Sir Richard Couch, and Sir Arthur Hobhouse).

ready quay berth as ordered by charterer: Held, affirming the decision of Mathew, J., that this clause in the charter-party of a vessel makes it obligatory on the charterers to name and provide a ready quay berth, and that any delay caused by their failure to do so, though not, strictly speaking, demurrage, the damages are yet sufficiently in the nature of demurrage to come within the demurrage clause in the charter-party, and that, accordingly, owners have a lien on cargo for same. *Harris and Dixon* v. *Marcus, Jacobs & Co.* (Court of Appeal, June 4th, 1885, Brett, M. R., Baggallay and Lindley, L. JJ.).

regular turn—bad weather: Held, that where a vessel is chartered to load in regular turn, and, through default of charterers, misses her turn, so losing eleven days, and at the end of the eleven days the weather is so stormy that the harbour-master will not allow the vessel to move for three days, the charterers are liable for the whole fourteen day's demurrage, their default

Lay Days—*continued.*

being the proximate cause of the further detention of the vessel for these days. *Jones* v. *Adamson* (Exchequer, Nov. 5, 1875, Cleasby and Amphlett, BB.).

scarcity of lighters: Held unanimously, that where the time for unloading is not named in the charter-party, the charterer is bound, on the arrival of the ship at the usual place of discharge in the port of discharge, to have the necessary appliances at hand for the discharge of the ship within a reasonable time, that is, within the time usually needful for the discharge of such a ship, and he cannot plead the crowded state of the port, and the consequent scarcity of lighters, as an answer to a claim for damages for detention. *Wright* v. *The New Zealand Shipping Co.* (Court of Appeal, June 27 and 28, 1878, Bramwell, Cotton, and Thesiger, L. JJ.). *See also* "*Postlethwaite* v. *Freeland*," p. 138.

ship repairers liable for delay. *See* "Ship Repairers."

working days for discharge—bad weather: Held, that when a given number of days is allowed to a charterer for unloading, a contract is implied on his part that, from the time when the ship is at the usual place of discharge, he will take the risk of any ordinary vicissitudes which may occur to prevent his releasing the ship at the expiration of the lay days; that, therefore, when the vessel having commenced to unload a cargo of timber, is prevented by the state of the weather from continuing to place the logs in the water and raft them as customary for four days, these four days are to be reckoned as working days. *Thiis* v. *Byers* (Queen's Bench, Feb. 16, and March 6, 1876, Blackburn and Lush, JJ.).

working days—Sundays—part days: Held unanimously, that "lying days" mean working days, and that Sundays are excluded; that if a vessel be discharged by 8 a.m. on a certain day the full day's demurrage can be claimed; that if a vessel commence to load late in an afternoon, that day may be counted as a working day. *Commercial S.S. Co.* v. *Boulton* (Queen's Bench, June 16, 1875, Mellor, Lush and Quain, JJ.).

Leakage,
free from average or claim arising from. *See* "Special Clauses."
not accountable for. *See* "Cargo Claims," pp. 41, 43.

Lee Shore,
pilots putting to sea in gale. *See* "Salvage," p. 203.

Letters
from master to owners. *See* "Evidence."

Letters of Marque,
British ship. *See* "Foreign Flag."

Liability,
charterer's liability to cease when cargo shipped. *See* "Charter-party," p. 49.
club calls, co-owners. *See* "Mutual Insurance."
limited company owning vessel. *See* "Mutual Insurance."
purchaser of shares. *See* "Mutual Insurance."
harbour authorities—improper orders. *See* "Harbour Authorities."
sunken wreck, badly lighted. *See* "Sunken Wreck."
unsafe berth. *See* "Harbour Authorities."
indorser of bill of lading for freight, &c. *See* "Bill of Lading," pp. 15 to 19.
life salvage, vessel lost, cargo to pay. *See* "Salvage," p. 201.
passengers' luggage, special contract. *See* "Passengers' Luggage."
removal of wreck. *See* "Removal of Wreck."
salved goods to contribute to a subsequent general average. *See* "General Average."
ship agent for extra pilotage. *See* "Pilotage."
shipowners to general average for excepted damage. *See* "General Average."
negligence of servants. *See* "Cargo Claims," pp. 35, 36.
towage agreement, cargo's share. *See* "Salvage," pp. 205, 206.
towage agreement, vessel lost. *See* "Salvage," p. 206.
ship repairers for delay. *See* "Ship Repairers."
unworkman-like materials. *See* "Ship Repairers."

Liberties
as per bills of lading. *See* "Deviation."

Liberty
to call at any port in any order—deviation. *See* "Cargo Claims," p. 40.

Liberty to Dock,
moored in river—termination of risk: Held unanimously, reversing the decision of Erle, C. J., with a jury, that a policy of insurance against fire while in the Victoria Docks, London, comprising the clause "With liberty to go into dry dock and light the boiler fires once or twice during the currency of the policy," did not cover the vessel while moored in the river after coming out of dry dock, even although she was so moored simply for the purpose of replacing her paddle-wheels, which had been removed to enable her to dock; she ought to have been removed back forthwith to the Victoria Dock to keep her policies valid. *Pearson* v. *Commercial Union Assurance Co.* (Common Bench, Nov. 18, 19, 24, 1863, Erle, C. J., and Williams and Keating, JJ.). *Refer* p. 151.

Liberty to Tow Vessels in Distress.
See "Cargo Claims," p. 40. *Refer* p. 105.

Lien,
advances by managing owner. *See* "Managing Owner."
agent not receiving transfer of master's lien. *See* "*Pro ratâ* Freight."
agent on salved cargo. *See* "Salvage," p. 199. *Refer* p. 183.
assignee of freight. *See* "Managing Owner," and p. 165.
bill of lading for part freight paid. *See* "Acceptance in exchange for documents."
loss on sales "to arrive." *See* "Acceptance in exchange for documents."
over goods for short delivery under other bills of lading, *See* "Bill of Lading," p. 18.
demurrage—cargo last on board. *See* "Lay Days," p. 134.
flat owners on cargo raised in their flat. *See* "Salvage," p. 201. *Refer* p. 150.

Lien—*continued.*

freight assigned by managing owner. *See* "Managing Owner."

cargo damaged, refusal of shipowners to re-ship. *See* "Cargo."

hire of ship—time charter—general ship—owner's lien: Held, that a shipowner has no lien on cargo in the case of his vessel being hired to a firm who advertise her as a general ship without notice of charter-party, and receive goods, giving receipts for same, but no bills of lading, even although it be a condition in the charter that the owner is to have a lien for hire. *The Stornoway* (Admiralty, March 21 and 22, 1882, Sir R. Phillimore and Trinity Masters). *Refer* p. 41.

master's. *See* "Master's Wages."

not transferred to agent. *See* "*Pro ratâ* Freight."

ships' papers after dismissal. *See* "Master's Wages."

material men—order of payment—seamen's wages—repairers in possession:—Held, that where judgment has been obtained by material men against a foreign ship, and the said ship is in dry dock, and the repairers, after the first judgment is obtained, also obtain judgment and sundry other claimants come forward, including seamen who claim for wages, and the ship is sold and does not realize sufficient to satisfy the claims, the seamen are first to be paid their wages earned before the lien commenced and expenses home, and then the material men who first obtained judgment are to have their costs, and thereafter the repairer's possessory lien is to be satisfied before the material men can recover the amount for which they originally sold the vessel and obtained judgment. *The Immacola Concezzione* (Admiralty, Dec. 20, 1883, Butt, J.). *Refer* p. 146.

mortgagees in possession. *See* "Mortgage"; "Necessaries."

not transferable. *See* "Bottomry."

necessaries supplied in British possession to British ship: Held unanimously, reversing the decision of the judge of the Vice-Admiralty Court, at Gibraltar, that material men supplying necessaries to a British vessel in a

Lien—*continued.*

British possession in which a Vice-Admiralty Court is established, do not acquire a maritime lien, and the ship, when in the hands of subsequent purchasers for value without notice of the debt, cannot be made chargeable with the necessaries. *Laws and others* v. *Smith* (Privy Council, Nov. 20 and 21, 1883, and Feb. 9, 1884, Right Honourables Lord Fitzgerald, Sir Barnes Peacock, Sir Robert Collier, Sir James Hannen, Sir Richard Crouch, and Sir Arthur Hobhouse).

necessaries supplied to foreign ship: Held unanimously, affirming the decision of the Court of Appeal (Brett, M. R., Bowen and Fry, L. JJ.), which reversed a decision of Sir James Hannen, that the statute 3 & 4 Vict. c. 65, s. 6, does not create a maritime lien in respect of necessaries supplied to a foreign ship in an English port, and, there having been no maritime lien for necessaries prior to the passing of that Act, material men cannot enforce their claims by proceedings *in rem* against a ship in the hands of a subsequent purchaser for value. *Northcote* v. *Owners of Heinrich Bjorn* (House of Lords, Feb. 23, 25, 26, and April 5, 1886, Lords Watson, Bramwell, and Fitzgerald).

necessaries supplied to foreign vessel in colonial port: Held unanimously, affirming the decision of Sir R. Phillimore, that when the captain of a foreign vessel in a colonial port draws upon a firm of brokers for the amount of his disbursements, which draft is duly met, the brokers have a lien on the vessel for the amount thereof, in default of payment by the owners. *The Anna* (Court of Appeal, May 18, 1876, James, L. J., Baggallay, J. A., and Lush, J.).

policies of insurance—unpaid premium: Held unanimously, affirming the decision of the Court of Appeal (Cockburn, C. J., James, Bramwell, and Brett, L. JJ.), which reversed a judgment of Kelly, C. B., and Cleasby, B., that if a shipowner employs a broker to effect insurances and the broker engages another

Lien—*continued.*

broker elsewhere to effect the same, the owner being cognizant thereof, the latter broker having paid the premium has a lien upon the policies for such premium as against the shipowner, even although the shipowner have paid the first broker the amount thereof. *Fisher* v. *Smith* (House of Lords, Nov. 14, 1878, Lord Chancellor Cairns, Lords Penzance, O'Hagan, and Selborne).

salved cargo by ship agent. *See* "Salvage," p. 199.

seaman's wages—priority of lien: Held unanimously, affirming the decision of Sir Robert Phillimore, that where in a damage action the ship in fault, being a foreign ship, has been sold, and the proceeds brought into Court are insufficient to satisfy the claims against same, the plaintiffs in the damage action are entitled to payment of their claim in precedence to the seamen's claim for wages earned before and after the collision, they having their remedy against the owner, who is not stated to be insolvent, and it being consequently unnecessary to decide what would be done in a contrary case, the intention being not to relieve the owner of the wrong-doing ship at the expense of the plaintiffs in the damage action. *The Elin* (Court of Appeal, May 4, 1883, Brett, M. R., and Cotton and Bowen, L. JJ.). *Refer* p. 144.

priority over light dues. *See* "Seaman's Wages."

sub-charter—on freight under. *See* "Seaman's Wages."

ship in course of building—rent of yard: Held, that where a shipbuilder having contracted to build a ship, and having received certain agreed instalments in part payment thereof, falls into arrears with his rent, the landlord may distrain for the rent due upon the ship, even though some of the materials of which the ship is built have been furnished, and more than the stipulated instalments paid, by the person for whom the ship is being built. *Clarke* v. *The Millwall Dock Co.* (Queen's Bench, June 19, 1885, Pollock, J.).

solicitor's, on claim. *See* "Seaman's Wages."

Life, Loss of,

passenger's contract: Held, that where the ticket of a passenger contained a notice that the shipowner would not be responsible for loss or damage of luggage, or for maintenance or loss of time during any detention of their vessels, nor for delay arising out of accidents, nor for any loss or damage arising from perils of the sea, or default of pilot, master, or seamen, the last-named exception was intended to apply to loss of life. *Haigh* v. *The Royal Mail Steam Packet Co.* (Queen's Bench, March 7, 1883, Cave, J.).

seaman's representatives' claim. *See* "Collision," p. 70.

settlement of all claims for. *See* "Limitation of Liability."

Life Salvage.

See "Salvage," p. 200; "Deviation."

Light

extinguished by belligerents. *See* "Capture and Seizure."

Light Dues,

coaling port—bunkers: Held, that where a steamer in ballast calls at a British port for the purpose of taking coals to be used as a "motive power" merely, the owner is not liable to pay light dues, even although her bunkers being full she takes a considerable quantity in one of her holds in addition, always providing that it can be proved that the quantity taken is for the steamer's use only, and is not an unreasonable quantity to take for the purposes of the intended voyage. *Samman* v. *Corporation of Trinity House* (Queen's Bench, April 26, 1887, A. L. Smith, J.).

coaling port—bunkers: Held, that a steamship on passage from foreign port to foreign port may call at a port for coal, and take sufficient thereof in her bunkers and hold to serve for out and home passages without rendering her liable to payment of light-dues, and that coal being a necessary, sect. 396 of the Merchant Shipping Act, 1854, applied in such a case. *The Albano* v. *The Nettuno* (Sunderland Magistrates, Jan. 28, 1887).

priority of lien for wages. *See* "Seamen's Wages."

Lighterage,

cargo to and from alongside. *See* "Charter-party," p. 52.

contract of lighterman. *See* "Concealment."

lightening before arrival. *See* "Lay Days," p. 136.

lighters alongside lost. *See* "Freight."

merchants to provide lighters. *See* "Lay Days," pp. 138, 141.

near thereto as she can safely get. *See* "Charter-party," pp. 47, 48, 53.

safe port—always afloat. *See* "Charter-party," p. 48.

scarcity of lighters. *See* "Lay Days," pp. 138, 141.

too deep to cross bar—cargo shipped. *See* "Charter-party," p. 47.

Lights.

See "Collision." *Refer* pp. 30, 81.

Lighting Wreck.

See "Sunken Wreck."

Limit of Price,

sale at more than—sub-agent. *See* "Sale of Ship."

Limitation of Liability,

both to blame. *See* "Collision," p. 58. *Refer* p. 38.

both vessels one owner. *See* "Collision," p. 57, and p. 204.

cattle, limit per head. *See* "Bill of Lading," p. 20.

crew space in foreign ship: Held, that in an action for limitation of liability, a foreign ship is entitled to make deduction from her tonnage on account of crew space, under the Merchant Shipping Act, 1884, although she may not have complied with the requirements of the Act of 1867. *The Palermo* (Admiralty, Dec. 9 and 10, 1884, Butt, J.).

deductions from tonnage, crew and engine space: Held unanimously, reversing the decision of Sir R. Phillimore, that the gross tonnage, "without deduction on account of engine-room," on which the limited liability of owners of steamships is calculated is the total measurement of the ship, obtained by the rules of measurement given in the Merchant Shipping Act, 1854, and including the space or spaces occupied by the crew, unless the provisions of the Merchant Shipping Act, 1867, with regard to such spaces are complied with,

Lim.

Limitation of Liability—*continued.*

whether the steamships be British or foreign. *The Franconia* (Court of Appeal, July 19, 1878, James, Brett and Cotton, L. JJ.).

double collision. *See* "Collision," p. 65.

interest added to limit of 8*l.* per ton: Held unanimously, that where, in a collision action, the damages have been referred to an arbitrator to assess the amount thereof, and the arbitrator finds for an amount in excess of 8*l.* per ton, but not in excess of such amount with 4 per cent. interest added, the Court will allow interest, and refuse to limit the shipowner's liability to 8*l.* per ton inclusive thereof. *Smith* v. *Kirby* (Queen's Bench, Dec. 15, 1875, Blackburn, Quain and Archibald, JJ.).

launch not registered as a ship: Held, that a vessel at the time of her launch, and before registration, is not a British ship, and cannot therefore avail herself of the limitation of liability granted by sect. 54 of the Merchant Shipping Act, 1862, for damage done to another vessel. *The Andalusian* (Admiralty, July 24 and 30, 1878, Sir R. Phillimore).

limited and non-limited vessels claims: Held, Lord Bramwell dissenting, reversing a decision of the Court of Appeal (Baggallay and Cotton, L. JJ., Brett, L. J., dissenting), and reinstating the decision of Jessel, M. R., that where two vessels have been injured by collision, and both have been found to be in fault, and each condemned to pay the moiety of the other's damage, the owners of one of the vessels having applied to have his liability limited, the owners of the other vessel are entitled to prove against the fund paid into Court for a moiety of their damage less a moiety of the damage sustained by the other party. *The Stoomvart Maatschappy* v. *The P. and O. Steam Navigation Co.* (House of Lords, June 2 and 5, and July 26, 1882, Lord Chancellor Selborne, Lords Blackburn, Watson, and Bramwell). *Refer* pp. 58, 65.

loss of life—all claims settled: Held, that where in case of collision it is proved that all claims in respect of

Limitation of Liability—*continued.*

loss of life have been settled, the payment into Court of 8*l.* per ton with interest puts an end to all actions against the ship admitted to be in fault. *The Foscolina* (Admiralty, March 31, 1885, Butt, J.).

master part-owner: Held, that where in an action by shipowners to limit their liability in respect of a collision with their vessel, the master who was on board at the time being a part-owner, the collision having occurred without the negligence or privity of the remainder of the owners, they have a right to have their liability limited, with a reservation of any right of action there may be against the master personally in respect of his negligence. *The Cricket; The Endeavour* (Admiralty, July 11, 1882, Sir R. Phillimore).

new and old register: Held, that where a vessel in fault has been re-registered subsequent to the collision, and tonnage increased without structural alteration, the tonnage upon which the owners are entitled to limit their liability is the tonnage in force at the time of the collision. *The Dione* (Admiralty, Feb. 3, 1885, Butt, J.).

removal of wreck—cargo's contribution: Held unanimously, affirming the decision of Sir R. Phillimore, that where a ship carrying cargo is sunk in the Thames in consequence of a collision caused by her own negligence, and her owner limits his liability under the Merchant Shipping Act, 1862, s. 54, and the Thames Conservancy raise the ship and cargo under their special acts and deliver them to the shipowner on payment of the expense of raising, the shipowner has no lien on the cargo, and no claim on the cargo-owner for the cargo's proportion of the expenses of raising. If the ship had not been in fault the owner might have recovered this as general average, but not where the loss was caused by his own default. *Prehn* v. *Bailey* (Court of Appeal, July 20, 1881, Jessel, M. R., and Brett and Cotton, L. JJ.). *Refer* p. 201.

same owner both vessels. *See* "Collision," p. 57 and p. 204.

Limitation of Liability—*continued.*

ship action discontinued—cargo-owners' action. *See* "Collision," p. 71.

steering gear not acting: Held, that where a collision for which a vessel is held liable is caused not through want of skill on the part of her master and crew, but solely in consequence of a defect in her steam steering gear, owing to the negligence or default of persons employed by the shipowner to repair the machinery on shore before the commencement of the voyage, that is improper navigation within the meaning of sect. 54, sub-sect. 4, of the Merchant Shipping Act Amendment Act, 1862, and the owners are entitled to limit their liability under that Act. *The Warkworth* (Court of Appeal, June 28, 1884, Brett, M. R., and Bowen and Fry, L. JJ.). *Refer* pp. 63, 72.

Limited Company (ship),

liability of members for club calls. *See* "Mutual Insurance."

Limits of Port,

advanced freight: Held unanimously, affirming the decision of Wills, J., that the word "port" in a charter-party means the port as commonly understood by shipowners and merchants, not the port as defined by Acts of Parliament or bye-laws for the purposes of revenue or pilotage. *The "Garston" Ship Co.* v. *Hickie & Co.* (Court of Appeal, July 3, 1885, Brett, M. R., and Baggallay and Bowen, L. JJ.).

always afloat. *See* "Lay Days," p. 136. *Refer* p. 48.

commencement of risk. *See* "At and from."

final sailing. *See* "Charter-party," p. 50.

now at Amsterdam. *See* "Charter-party," p. 52.

ten days after sailing. *See* "Freight advanced."

termination of voyage policies: Held, Lord Shand dissenting, affirming a decision of Lord Trayner, that policies on a vessel terminating thirty days after arrival at port of discharge, do not continue in force if the vessel, having completed discharge, proceeds beyond the harbour, docks, or piers of the port, which are the statutory limits of the port, as where a vessel having

Limits of Port—*continued.*

been taken to a dry dock without the said statutory limits, in issuing therefrom for the purpose of proceeding to a neighbouring port, is caught in the fairway of the channel by a gust of wind and capsized, the voyage policies to port of discharge are not liable for the loss or damage so sustained. *Hunter* v. *Northern Marine Ins. Co.* (Court of Session, Edinburgh, March 4, 1887, Lord President, Lords Mure, Shand and Adam).

Liverpool Average Bond.

See "General Average."

Loading,

damaged while loading, sailing warranty. *See* "Cargo Claims," p. 42.

frost, canal frozen, river frozen. *See* "Lay Days," pp. 137, 139.

interruption of by fire, full and complete cargo. *See* "Charter-party," p. 51.

part cargo at port not named in policy. *See* "At and From."

prompt dispatch in turn. *See* "Lay Days," p. 140.

regular turn—bad weather. *See* "Lay Days," p. 140.

snowstorm delaying. *See* "Lay Days," p. 134.

war and hostilities preventing. *Refer* pp. 138, 240.

Load-line,

damage below. *See* "Contact Clause."

Loan of Navigator.

See "Salvage," p. 201.

Log Book.

engineer's log. *See* "Evidence."

entries signed two days after event: Held, that entries made in a ship's log, the signature of which cannot be established owing to the decease of the captain and mate, as having been made sooner than two days after a collision, is not admissible as evidence on behalf of the ship in which they were made, the said log not being satisfactorily proved to be a sufficiently contemporaneous instrument. *The Henry Coxon* (Admiralty, July 6 and 8, 1878, Sir R. Phillimore).

Looking to them for Freight.
See "Bill of Lading," p. 17.

Look-out Man.
See "Compulsory Pilotage."

Loss
before discharge, at and from. *See* "Chartered Freight."
cause of, proximate or remote. *See* "Seaworthiness."
cause of, proximate or real. *See* "Cargo Claims," p. 37. *Refer* pp. 26, 29.
of charter—salvor. *See* "Salvage," p. 196.
of hire. *See* "Chartered Freight."
of life. *See* "Life, Loss of."
of market, damages not claimable. *See* "Cargo Claims," pp. 39, 42.
of market, basis of assessment. *See* "Cargo Claims," p. 42. *Refer* p. 16.
of profits—salvor. *See* "Salvage," p. 196.
prior to receipt of order to insure. *See* "Broker omitting to telegraph."
ratification of insurance after advice of. *See* "Freight."
whilst deviating to salve other than life. *See* "Cargo Claims," p. 40 and p. 105.

Luggage.
See "Passengers' Luggage."

Lump sum Freight,
part cargo lost. *See* "Freight, Lump sum."

Lumpers,
refusal to permit to work. *See* "Dock Company's Bye-laws."

Lying Days.
See "Lay Days."

Machinery,
latent defect, unseaworthiness. *See* "Salvage," p. 204.

Machinery Claims,
inherent vice—wear and tear—general average—port of distress: Held, that where the casing of the main-shaft of a steamer, and the shaft itself, break at sea, and the former admits water into the hold, and the vessel is bound to bear up for the nearest port for repairs, the sea report not indicating any special circumstance as to the state

Machinery Claims—*continued.*

of the sea or the wind to explain the damages by a risk of navigation, they must be attributed not to a sea risk but to inherent defects, and there is, consequently, no justification for a settlement of general average, and the insurers of the steamer are not liable. *The Lippe* (Marseilles Tribunal of Commerce, on or about Oct. 10, 1887). *Refer* p. 204.

pump, air-chamber bursting: Held unanimously, reversing the decision of the Court of Appeal (Lindley and Lopes, L. JJ., Lord Esher, M. R., dissenting), and a prior decision of Mathew and A. L. Smith, JJ., that the bursting of a pump which was being used while the vessel was in harbour, caused by a valve becoming choked or closed, either accidentally or as a result of negligence on the part of those in charge, does not come within the perils insured against by an ordinary policy of marine insurance over hull and machinery. *Hamilton, Fraser & Co.* v. *Thames & Mersey Ins. Co.* (House of Lords, July 14, 1887, Lord Chancellor, Lords Herschell, Watson, Bramwell, Fitzgerald and Macnaughten).

Mail Packet

of foreign government. *See* "Collision," p. 62.

Majority

shareholders claiming possession. *See* "Co-ownership."

Malice,

damages for. *See* "Bottomry."

Man-at-wheel

not obeying pilot's orders. *See* "Compulsory Pilotage."

Managing Owner.

See "Co-ownership."

accounts kept by his firm: Held, reversing the decision of Sir R. Phillimore, that a managing owner cannot protect himself against setting out books and documents relating to a ship's account in his affidavit of documents or in answer to interrogatories by alleging that the same are kept by a firm of which he is a member and the action is brought against him in his

Managing Owner—*continued.*

individual capacity only, but he must discover all documents whether in his possession or in that of his firm. *Swanston* v. *Lishman* (Court of Appeal, Nov. 3, 1881, Jessel, M. R., and Baggallay, Brett and Lindley, L. JJ.).

assignment of freight: Held unanimously, affirming the decision of Huddleston, B., that a ship's husband has no implied power to assign or pledge the entire freight to become due under a charter, although money be owing to him by the co-owners for advances made on ship's account, and if his appointment as ship's husband ceases before the freight is earned, an assignee of his interest in the freight is not entitled to it as against the co-owners; the ship's husband not having a charge on the freight for the repayment of advances, but a right of lien or retainer. *Beynon* v. *Godden* (Court of Appeal, March 1, 4, 5 and May 18, 1878, Bramwell, Brett and Cotton, L. JJ.).

commissions for management. *See* under.

insolvency of—liability of co-owners for club calls. *See* "Mutual Insurance."

master leaving moneys in the hands of. *See* "Master's Wages, &c."

power of charter. *See* "Mortgage."

registrar's report—commissions for management: Held, that where the registrar of the Court, assisted by merchants, has disallowed a charge of 2½ per cent. upon the gross freight made by a managing owner in a ship's account, and substituted in its place an allowance equal to about 100*l.* per annum, this Court, while not agreeing with the contention that a managing owner having an interest in the adventure is not entitled to any commission on the profits, will nevertheless not disturb the registrar's report, in the absence of evidence that the registrar was wrong in the allowance made therein. *White* v. *Ditchfield* (Admiralty, March 11, 1885, Butt, J.).

ship-store dealer—misapplication of funds: Held, that where a master who by the terms of his agreement with the managing owner, who is also a ship-store

Managing Owner—*continued.*

dealer, has to find the provisions for the officers and crew at a certain rate per day, settles with the managing owner in his accounts certain sums for stores supplied, which sums the managing owner misapplies and does not credit to the ship, the master is not responsible for such misapplication of funds, which is a wrong done to the owners for which he is not responsible, and he can sue them for his wages and disbursements. *The Dora Tully* (Admiralty, Jan. 12 and 19, 1886, Sir James Hannen).

Margin of Price,

sub-agent obtaining beyond. *See* "Sale of Ship."

Market,

damages for loss of. *See* "Collision," pp. 39, 42.

Marks

becoming obliterated. *See* "Total Loss."

Marshall's Report,

in favour of sale of ship. *See* "Collision," p. 70.

Master,

See also "Master's Agency" and "Master's Wages, &c."

acting unlawfully. *See* "Master's Agency." *Refer* p. 103.

agreement between masters. *See* "Salvage," pp. 194 to 206.

ante-dated bill of lading. *See* "Bill of Lading," p. 16.

appointing agents to salve. *See* "Salvage," p. 199.

authority not superseded, French Law. *See* "Compulsory Pilotage."

barratrous acts of. *See* "Barratry."

bill of lading, signature of, by authority of. *See* "Bill of Lading," p. 21.

bill of lading, notice of two claimants under. *See* "Bill of Lading," p. 17.

bond for collision claim, himself in fault. *See* "Collision," p. 65.

breach of warranty by. *See* "Barratry."

breaking law to owner's injury. *See* "Barratry."

certificate improperly suspended. *See* "Board of Trade Inquiry."

Master—*continued.*

charterer's servant, engaging crew. *See* "Seamen's Wages."

chartering ahead. *See* "Master's Agency."

consenting to get under way in a fog. *See* "Compulsory Pilotage."

contempt of court by. *See* "Arrest of Ship."

contract made by, how binding on owners. *See* "Salvage," pp. 194, 199, 206.

co-owner—collision damages. *See* "Limitation of Liability."

co-owner, dismissed, demanding sale of vessel. *See* "Co-ownership."

co-owner, lien for wages. *See* "Master's Wages, &c."

dismissing him. *See* "Co-ownership."

dismissing him—mortgagee. *See* "Master's Wages."

delivering cargo to holder of one bill of lading only. *See* "Bill of Lading," p. 17.

draft for disbursements. *See* "Master's Wages."

draft for disbursements, foreign vessel. *See* "Lien."

employing agent to salve. *See* "Salvage," p. 199. *Refer* p. 183.

engaging crew as charterer's servant. *See* "Seaman's Wages."

exceeding his authority—stowage. *See* "Master's Agency."

giving improper information to pilot (and crew). *See* "Compulsory Pilotage."

illegal shipment of deck cargo. *See* "Deck Cargo."

in fault, bond for collision claim. *See* "Collision," p. 65.

knowledge of time charter and terms. *See* "Master's Wages, &c."

law breaker, to owner's injury. *See* "Barratry."

leaving balance of account in hands of managing owner. *See* "Master's Wages, &c."

letters to owner. *See* "Evidence."

lien for disbursements. *See* "Master's Wages, &c."

lien for salvage expenses not transferable. *See* "*Pro rutâ* Freight."

Master—*continued.*
lien for wages. *See* "Master's Wages, &c."
limit of authority to bottomry. *See* "Bottomry."
misconduct—forfeiting wages claim. *See* "Master's Wages, &c."
mortgagee dismissing him. *See* "Master's Wages, &c."
refusal to cut beams to facilitate salvage of cargo. *See* "Wreck."
refusal to salve except on excessive terms. *See* "Salvage," p. 194.
removing arrested vessel. *See* "Arrest of Ship."
right to jury when suing. *See* "Master's Wages, &c."
salvage award, Court deciding share. *See* "Salvage," p. 201.
salvors defying him. *See* "Salvage," p. 198, 202.
selling wreck and cargo. *See* "Master's Agency." *Refer* pp. 3, 239.
settling with managing owner for stores. *See* "Managing Owner."
smuggling. *See* "Capture and Seizure."
suggesting improper manœuvres. *See* "Compulsory Pilotage."
taking to sea arrested ship. *See* "Arrest of Ship."
taking to sea against mortgagee's orders. *See* "Master's Wages, &c."
time charter, knowledge of. *See* "Master's Wages, &c."
undertaking to pay disbursements. *See* "Master's Wages, &c."
undertaking to pay salvage. *See* "Salvage," pp. 194, 206.

Master's Agency,
See "Master."
appointing agents to salve. *See* "Salvage," p. 199.
bottomry, authority to effect. *See* "Bottomry."
charter not binding on owners—chartering ahead: Held unanimously, reversing a decision of Sir Robert Phillimore, that a master has no authority to bind his owners by writing forward to a foreign port authorizing a broker there to charter his ship prior to the ship's arrival therein, but is limited to cases where he is himself in a foreign port and there is difficulty in

Master's Agency—*continued.*

communicating with his owners; charters made under other conditions cannot be sued upon for breach of performance thereof. *The Fanny; The Mathilde* (Court of Appeal, June 6 and 13, 1882, and March 2 and 3, 1883, Brett, Cotton and Bowen, L. JJ.).

selling stranded vessel—constructive total loss: Lord Coleridge had decided at the previous London Michaelmas sittings that, where a master of a stranded vessel sells his vessel and cargo on the recommendation of surveyors, one of whom becomes the purchaser, and successfully floats her, the question affecting the case is not whether the captain considered the vessel totally lost, but whether at the time of the sale the vessel was, as a fact, a constructive total loss, and as the subsequent floating and repairing of the vessel sufficiently demonstrated that the vessel was not a constructive total loss he (Lord Coleridge) had refused to leave any question to the jury, and had non-suited the owner. On a rule for a new trial the Court was now divided, Grove, J., being of opinion that there was matter upon which to take the opinion of a jury, and Lord Coleridge adhering to his prior decision. The rule accordingly dropped. *Hall* v. *Jupe* (Common Pleas, June 9 and 14, 1880, Lord Coleridge, C. J. and Grove, J.). *Refer* pp. 3, 239.

stowage of cargo—exceeding his authority: " . . . . although it is true that the stowage of the cargo is undoubtedly within the scope of the master, yet, in the absence of proof to the contrary, it must be taken that his authority in this, as in other respects, is, by his instructions limited to that which is lawful. . . . . If in seeking to carry out the purpose of his employment he oversteps the law, he outruns his authority, and his principal will not be bound by what he does." Judgment of Cockburn, C. J., in *Wilson* v. *Rankin*. *Refer* p. 103.

towage agreement. *See* " Salvage," p. 206.

Master's Wages, &c.,

collision damages, bond for. *See* " Collision," p. 65.

collision damages, master part owner. *See* " Limitation of Liability."

Master's Wages, &c.—*continued.*

laches of master—sale of ship—lien: Held, that a master of a ship has a maritime lien for disbursements made in the service of the ship, and that where he has incurred liability by drawing bills, and such liability is not discharged, he has a lien to the extent of that liability, and such lien attaches to the ship in the hands of *bonâ fide* purchasers, without notice of the lien at the time of the purchase, unless it be lost by the *laches* of the master. Held, further, that the act of a master in not compelling payment against his ship for a liability incurred as above, because he believes it will be met by his owners, until he is actually sued himself, does not amount to such *laches* as will forfeit his lien against a purchaser. *The Fairport* (Admiralty, Nov. 30, 1882, Sir R. Phillimore).

lien on ship—leaving moneys in hands of managing owner: Held, that where a master, after receiving a portion of his wages, elects to allow a balance to remain in the hands of the managing owner at interest, he by so doing loses his lien and cannot recover as against the ship; but the intention must be clearly proved, inasmuch as the managing owners are the agents of the shipowners, and not of the master; therefore the mere fact of the master allowing a balance to remain in the managing owners' hands after it has become due will not deprive him of his remedy, in the absence of clear proof that it was his intention to lend it to the managing owners or bank it with them personally. *The Rainbow* (Admiralty, June 24 and July 1, 1885, Butt, J.).

lien on ship in hands of *bonâ fide* purchaser: Held, that the master of a ship has a lien for disbursements made on behalf of the ship, and therefore his claim has priority over that of a *bonâ fide* purchaser. *The Ringdove* (Admiralty, May 11 and July 13, 1886, Sir James Hannen).

lien on ship's papers: Held, that a master who has been dismissed from his vessel has no lien upon the ship's papers or keys, his proper course being to bring an

Master's Wages, &c.—*continued.*

action for wrongful dismissal and arrest the ship. *The St. Olaf* (Admiralty, May 12, 1876, Sir R. Phillimore).

master co-owner—lien before mortgagees in possession—ten days' double pay—slops: Held, that the fact of a master being a co-owner and the vessel in possession of the mortgagees does not prejudice his lien for wages and disbursements, viz., balance of wages, ten days' double pay; slops supplied to seamen who had deserted, considered as part of seamen's wages; liabilities incurred for the benefit of the ship, treated as disbursements; dishonoured bill of exchange drawn by the master upon the owners. Mortgagees can only take the place of the owners in respect of these items. *The Feronia* (Admiralty, Jan. 27 and Feb. 4, 1868, Sir R. Phillimore).

mortgaged ship—misconduct—orders of mortgagee: Held, varying the registrar's report, that where a master appointed by a mortgagor, his owner, takes away his ship to sea on instructions from the mortgagor, and in defiance of the written instructions of the mortgagee, who had taken possession of the vessel, and the mortgagee thereupon dismissed him on the first opportunity and before his agreement with the owner has expired, such taking away of the ship is misconduct on the part of the master, disentitling him to all claim for wrongful dismissal. *The Fairport* (Admiralty, Nov. 25, 1884, Butt, J.).

right to a jury: Held, confirming decision of Butt, J., that in an action by a master for his disbursements, the registrar and judge have discretionary power under R. S. C., Order XXXVI., as to whether the action shall be tried with or without a jury. *The Temple Bar* (Court of Appeal, Nov. 12, 1885, Lord Esher, M. R., Cotton and Lindley, L. JJ.).

ten days' double pay—without sufficient cause: Held, that where in an action for master's wages it appears that, at the institution of the suit, accounts are outstanding between the owners and the plaintiff, and that the same have not been taken or settled, and

Master's Wages, &c.—*continued.*

that within two days of the institution of the suit the wages are paid, the owners have not refused to pay "without sufficient cause" within the meaning of sect. 187 of the Merchant Shipping Act, 1854, and therefore the plaintiff is not entitled to recover ten days' double pay. *The Turgot* (Admiralty, Jan. 16 and 19, 1886, Sir James Hannen).

time charter—knowledge of terms thereof: Held, that where a vessel is chartered under a charter providing that the shipowner shall pay for all provisions, wages of captain and crew, and for the necessary equipment for the efficient working of the vessel; the charterers for all coals, port charges and other expenses, except those before stated, and the captain gives a draft on his owner for provisions and coals, which draft had been dishonoured; the master having notice of the terms of the charter-party, is agent both for the owners and charterers, and that therefore the owners are liable in respect of the provisions, but not in respect of the coals. *The Turgot* (Admiralty, Jan. 16 and 19, 1886, Sir James Hannen).

time charter—necessaries: Held unanimously, affirming the decision of Butt, J., that if a ship is chartered on time, charterers to appoint, but owners, if desirable, to dismiss the master, owners to pay for all provisions and wages of captain and crew, and for the necessary equipment and working of the ship; charterers to pay for all coals, pilotages, port charges, &c., the master is the servant of the owners, and has a right against them for the recovery of his wages and such disbursements as are necessary for the navigation of the ship, and which the charterers have not undertaken to pay. Further, if the charterers refuse to pay their share of disbursements according to agreement, and the ship could not be navigated without them, the master is entitled to charge them against his owners. *The Beeswing* (Court of Appeal, March 5, 1885, Brett, M. R., Baggallay and Lindley, L. JJ.).

Masts,

cut away. *See* "General Average."

Mate's Receipts,
liability on. *See* "Cargo Claims," p. 42.
non-liability on. *See* "Short Delivery." *Refer* pp. 20, 52.

Material Fact.
See "Concealment."

Material Men,
intervention in mortgage action. *See* "Mortgage."
necessaries supplied. *See* "Lien."
obtaining judgment—costs. *See* "Lien."
possessory lien, priority of. *See* "Mortgage."
priority of mortgagee's claim. *See* "Mortgage."

Maximum Speed,
over the ground or through the water. *See* "Collision," p. 72.

Measurement
of tonnage, crew and engine space. *See* "Limitation of Liability."

Member
of insurance association. *See* "Mutual Insurance."

Meritorious Services,
unsuccessful. *See* "Salvage," p. 202.

Mersey Dock Act,
ballast or cargo ship. *See* "Harbour Authorities."

Mersey Pilotage,
anchoring in river. *See* "Compulsory Pilotage."

Metalling Clause,
internal contact. *See* "Contact Clause."

Minority
shareholders—bond for safe return. *See* "Co-ownership." *Refer* p. 96.

Misappropriation
of moneys received. *See* "Managing Owner;" "Co-ownership."

Misconduct
of salvors. *See* "Salvage," pp. 198, 202.

Misleading
conduct on the part of a creditor on a ship destroys his right of recovery from co-owners. *See* "Co-ownership."

Missing regular turn,
charterer's fault. *See* "Lay Days," p. 140.

Missing Vessel,
policies expiring on voyage. *See* "Time Policy."

Moderate Speed,
fog, high seas and crowded waters. *See* "Collision."

Moored
in river—uninsured. *See* "Liberty to Dock."

Moored 24 hours
in good safety. *See* "Termination of Risk."

Mortality or Jettison,
free of. *See* "Cargo Claims," p. 36.

Mortgage,
charter objected to by mortgagee: Held, that where shares in a ship are mortgaged, and the managing owner, duly appointed by all the co-owners, charters the ship for a foreign voyage, the mortgagee, even although he takes possession of his shares before the sailing of the ship but after the making of the charter-party, cannot arrest the ship or demand bail for safe return, provided the performance of the charter-party is not prejudicial to the security. *The Maxima* (Admiralty, June 18, 1878, Sir R. Phillimore).
charter objected to by mortgagee—security impaired: Held, that where the managing owner of a mortgaged ship charters her before the mortgagee takes possession, the mortgagee cannot interfere to prevent the charter being carried out, unless it will materially prejudice and detract from or impair the sufficiency of the security of the vessel as comprised in the mortgage. *The Fauchon* (Admiralty, April 21, 1880, Sir R. Phillimore).
dismissal of master by mortgagee. *See* "Master's Wages, &c."
freight, managing owner's right to mortgage or hypothecate. *See* "Managing Owner."
master's lien on ship in possession of mortgagees. *See* "Master's Wages, &c."

Mortgage—*continued.*

material men—priority of, over mortgagee: Held, that a material man, into whose hands a vessel has been put for repairs by a mortgagor left in possession by a mortgagee, has, so long as he retains his possession, a lien for repairs done in priority over the mortgagee. *Hamilton* v. *Harland and Wolff; The Acacia* (Admiralty, Feb. 23, 24, 25, and 27, 1880, Townsend, J.).

material men—priority of mortgagee: Held, that mortgagees are entitled to priority over material men whose claims arise subsequent to the registration of the mortgages, unless the material men have acquired a possessory lien; and that the fact of a graving flat being attached to the vessel, and tools, the property of the material men, being on board at the time of the arrest, are insufficient to prove possession on their part. *The Scio* (Admiralty, March 12, 1867, Dr. Lushington).

material men intervening: Held, that where, after the commencement of a mortgage action against a British ship whose owners are domiciled in this country, material men intervene, and the ship is sold by order of the Court, and does not realise sufficient to satisfy the lien of the material men, the plaintiff in the mortgage action is entitled to taxed costs up to the date of the sale of the ship out of the proceeds thereof. *The Sherbro* (Admiralty, Feb. 20, 1883, Sir Robert Phillimore).

mortgagee's rights—unregistered mortgage: Held unanimously, that the mortgage of a ship transfers the ownership so as to entitle the mortgagee to the whole of the mortgagor's interest as security for his money. The only effect of an omission to register a mortgage is to postpone it to a mortgage subsequently registered. The mortgagee is entitled to the freight as against an assignee thereof by an assignment made after the date of the mortgage, but before the registration thereof. *Keith* v. *Burrows* (Common Pleas, Feb. 10, 21, and June 14, 1876, Brett, Archibald, and Lindley, JJ.). *See* House of Lords' decision next page.

Mortgage—*continued.*

mortgagee's rights as to freight—cargo on ship's account: Held unanimously, affirming the decision of the Court of Appeal (Mellish, Baggallay, and Bramwell, L. JJ.), which reversed a decision of the Common Pleas Division (Brett, Archibald, and Lindley, JJ.), that where a mortgaged ship takes a cargo on ship's account at a nominal bill of lading freight of 1*s.* per ton, but before the ship's arrival the cargo is sold, the contract stating that freight is "to be computed at 55*s.* per ton, and invoice rendered accordingly," the actual freight is, nevertheless, only that which has been actually contracted for by the bill of lading; and the mortgagee, on taking possession, is only entitled to freight according thereto, the 55*s.* per ton being not really freight, but only part of the price of the cargo kept back till the arrival of the ship, against which the mortgagor of the ship can secure an advance from purchasers of cargo, and the latter are not liable to the mortgagee for more than bill of lading freight. *Keith* v. *Burrows* (House of Lords, July 10, and 12, 1877, Lord Chancellor Cairns, Lords Penzance, O'Hagan, Blackburn, and Gordon).

necessaries—costs—mortgagees intervening: Held, that where mortgagees intervene in an action for necessaries, said action being, as a consequence, withdrawn, and the ship, on the application of the mortgagees, is sold, they receiving the proceeds, the costs of the sale shall be borne by them, and not by the parties to the necessaries action. *The Colonsay* (Admiralty, Dec. 15, 1885, Butt, J.).

uninsured if mortgaged, rule explicit. *See* "Mutual Insurance."

unregistered shareholder. *See* "Co-ownership."

Mutual Insurance,

liability of co-owners for calls: Held unanimously, confirming the decision of Mathew, J., at Newcastle-on-Tyne, that where policies of insurance entailing liabilities are entered into by a managing owner, the co-owners or any of them become personally liable, in

Mutual Insurance—*continued.*

case of default by the managing owner, if they ratify such action on his part in any way. *Newcastle S.S. Indemnity Association, Limited* v. *Nicholson* (Court of Appeal, March 9, 1886, Lord Esher, M. R., Lindley and Lopes, L. JJ.).

liability of co-owners for calls: Held, that a member of a steamship company does not become a member of a mutual insurance association and liable for calls, if the steamer, to work which the company has been formed, is insured in the association, unless he has authorised the steamship company or their managers to open the said policy of insurance for his behoof, or has adopted it after it was issued. *The Rebecca* (Glasgow, Feb. 4, 1887, Sheriff Guthrie).

liability of co-owners for calls: Held unanimously, affirming the decision of Grove, J., that if a managing owner insure a vessel in a mutual association, the articles of association whereof stipulate that persons so insuring become members of the association, the policy only binds the member, and as there can in all such cases be no undisclosed member, neither can there be any undisclosed principal who can sue, or be sued by, the association; shareholders in ships so insured can therefore not be sued for the calls in respect thereof. *United Kingdom Mutual S.S. Association, Limited* v. *Nevill* (Court of Appeal, May 27, 1887, Lord Esher, M. R., Fry and Lopes, L. JJ.).

liability of co-owners for calls—necessaries: Held, that as the whole object of mutual insurance is to protect the principals and not the agents, if a managing owner enter a ship in a mutual insurance association he is insuring on behalf of all the owners of the ship, and all the owners are therefore as liable for the premium of insurance as they would be for necessaries.* Should the co-owners, however, have already paid moneys to the managing owner for insurance, or he be in their debt, this might alter the case in favour

* See "Necessaries."

Mutual Insurance—*continued.*

of the co-owners. *Ocean Iron S.S. Insurance Association* v. *Leslie* (Newcastle Assizes, July 22, 1887, Mathew, J.).

mortgaged ship—uninsured without notice: Held, reversing the decision of Stuart, V.-C., that where in the policy of a mutual insurance association it is stipulated in the rules forming part of the contract of insurance, that no vessel entered in the association shall be insured, if mortgaged, unless the mortgagor guarantee the payments, it rests with the member to provide the said guarantee, and if it be not provided and the ship be lost, the owner cannot recover, and cannot successfully plead that the association having knowledge that the vessel was mortgaged should have themselves applied for the guarantee. *Turnbull* v. *Woolfe* (Appeal in Chancery, Nov. 8, 1862, Lord Chancellor Westbury).

no action to be taken at law against society: Held (Pollock, B., and Archibald, J., dissenting), reversing a decision of the Queen's Bench (Blackburn, Mellor, and Lush, JJ.), that although according to the rules of a mutual insurance association no member is permitted to bring any action at law against the association, and the directors have to decide whether a claim is to be paid or not, a member's representative, or one whose actual membership is doubtful, is, nevertheless, entitled to bring an action if the directors act in an unfair manner to his prejudice. *Edwards* v. *Aberayron Mutual Ship Insurance Society, Limited* (Exchequer, May 10 and 11, 1875, and Feb. 26, 1876, Kelly, C. B., Amphlett and Pollock, BB., Archibald and Brett, JJ.).

non-payment of calls—uninsured without notice: Held, that if a member of a mutual association for the insurance of vessels fails to comply with the rules of the association as to payments, he cannot recover losses under the said policy, or demand a policy to continue the vessel until next arrival, although he may not have received notice that the contract of insurance is at an end, and that he still remains liable for calls

Mutual Insurance—*continued.*

unpaid, and cannot set off a claim or loss as against said unpaid calls. *The Marine Mutual Insurance Association, Limited* v. *Young* (Exchequer, June 14 and 29, 1880, Pollock, B.).

non-payment of calls: Held, that in an insurance association, according to the rules of which non-payment of calls invalidates the policy, a payment made by a member, who had made default, after receipt of advices of a loss, and accepted by the association in ignorance thereof, did not revive the rights of the member forfeited by his non-payment at due date. *The Dewa Gungadhur Ship Co., Limited* v. *United Kingdom Marine Mutual Ins. Association, Limited* (Queen's Bench, March 1st, 1886, before Lopes, J.).

non-payment of calls—settlements in account: Held unanimously, affirming the decision of the Court of Queen's Bench (Wills and Grantham, JJ.), that if an insurance association has a rule in its policy that the failure of a member to accept the drafts of its manager or non-payment thereof when due, invalidates his insurance, the insurance is, notwithstanding, not invalidated as a consequence of non-acceptance or non-payment, if the member can prove that the rule has been departed from previously, or that the amount stated in the draft is incorrect, credit not having been given for an amount admitted to be due to him by the manager of the association. *Williams* v. *The British Marine Mutual Ins. Association, Limited* (Court of Appeal, Jan. 26, 1887, Lord Esher, M. R., Bowen and Fry, L. JJ.)

notice of withdrawal: Held, that where the articles of association of a mutual association simply state that notice of withdrawal is to be given before a certain date, a rule requiring fourteen days' prior notice cannot be reconciled with the articles of association, and is, therefore, not binding upon the members. *Steam-tug, &c. (Sunderland) Indemnity Association* v. *Sharp* (Sunderland County Court, July 21, 1887, Judge Meynell).

Mutual Insurance—*continued.*

outstanding premium—transfer of shares: Held unanimously, affirming the decision of Stephen, J., and a special jury at Swansea, that the purchaser of a vessel does not, in the absence of a stipulation to that effect, take over the liability for premium of insurance for the year previous to the purchase, and if paid by purchaser the amount thereof may be deducted from the purchase-money. *Short* v. *Clark* (Court of Appeal, April 6, 1886, Esher, M.R., Lindley and Lopes, L. JJ.).

policy, seal and signature: Held, that a policy of insurance issued by a mutual insurance association is valid under the Stamp Act, 30 & 31 Vict. c. 23, s. 7, if it is sealed with the seal of the association, and signed by the manager. *The Marine Mutual Insurance Association, Limited* v. *Young and another* (Exchequer, June 14 and 29, 1880, Pollock, B.).

rules not sufficiently clear. *See* "Constructive Total Loss."

unstamped policy—liability—estoppel: Held unanimously, affirming the decision of Mathew and Day, JJ., that if a member of an association insures vessels therein without requiring stamped policies, he is estopped from pleading as a defence to an action for calls unpaid, that he is not liable because the contracts are illegal, said contracts not being criminal or prohibited by sects. 13 and 14 of 30 & 31 Vict. c. 23. *The Barrow-in-Furness Mutual Ship Insurance Co., Limited* v. *Ashburner* (Court of Appeal, May 15 and 16, 1885, Brett, M.R., and Baggallay and Bowen, L. JJ.).

Nationality,

British vessels and seamen under foreign flag. *See* "Foreign Flag."

foreign vessel and bottomry. *See* "Bottomry."

foreign vessel and supplies. *See* "Lien."

ownery governing. *See* "Foreign Flag."

Nature of

general average sacrifice. *See* "General Average."

Navigable River,
sunken vessel raised by owners—no lien on cargo. *See* "Salvage," p. 201. *Refer* p. 150.

Navigator,
loan of. *See* "Salvage," p. 201.

Near thereto
as she can safely get. *See* "Lay Days," pp. 135, 136.
as she can safely get—lighterage. *See* "Charter-party," pp. 47, 48.

Nearest
discharging place, afloat. *See* "Lay Days," p. 136.
safe port. *See* "Charter-party," pp. 47, 48.

Necessaries,
See "Mortgage" and "Lien." *Refer* pp. 95, 147.
bottomry already on vessel. *See* "Bottomry."
disbursements by master. *See* "Master's Wages, &c."
managing owner misapplying moneys received for. *See* "Co-ownership;" "Managing Owner."
mortgagees intervening in action—costs. *See* "Mortgage."
premium of insurance: Held, that the insurance of a vessel is something quite extraneous to its equipment for sea, and however prudent it may be for an owner to insure, it is a prudence exercised for his own protection and not for the requirements of the vessel, which is the sense in which the word necessaries is used in the statute; that even premiums of insurance on amount advanced as for necessaries is not itself necessaries in the legal sense thereof. *The Heinrich Bjorn* (Admiralty, June 26 and July 23, 1883, Sir James Hannen).
supplies to British and foreign vessels in various ports. *See* "Lien."

Negligence,
delay in delivering cargo. *See* "Cargo Claims," pp. 39, 42.
donkey-pump air-chamber burst. *See* "Machinery Claims."
master and mariners excepted. *See* "Cargo Claims," pp. 36, 44. *Refer* p. 20.
master and mariners, excepted—total loss. *See* "Seaworthiness."

Negligence—*continued.*
proof of, not proved. *See* "Board of Trade Inquiry."
salvor's tug. *See* "Salvage," p. 202.
sea-cocks left open. *See* "Seaworthiness."
shipowner's servants, liability for. *See* "Cargo Claims," pp. 36, 44; "Tug and Tow."
steering gear improperly repaired. *See* "Limitation of Liability."
tug placing tow in danger. *See* "Tug and Tow."
wilful default. *See* "Cargo Claims," p. 35.

Negligent Navigation,
See "Collision."
advanced freight to be repaid. *See* "Cargo Claims," p. 40.
cargo-owners salvage expenses. *See* "Cargo Claims," p. 45.
rounding point in Thames. *See* "Collision," pp. 73, 74.

No Action
to be taken at law. *See* "Mutual Insurance."

No Cure no Pay,
form of agreement. *See* "Salvage," p. 194.

Nominal Freight
in bill of lading—cargo on ship's account. *See* "Mortgage."

Non-acceptance
of draft—voiding policy. *See* "Mutual Insurance."

Non-payment
of calls—voiding policy. *See* "Mutual Insurance."

Not accountable for Leakage.
See "Cargo Claims," pp. 41, 43. *Refer* p. 218.

Notice,
abandonment. *See* "Abandonment."
abandonment not necessary where nothing to abandon. *See* "Chartered Freight."
cancelling policy. *See* "Mutual Insurance."
master notified of two claimants under bills of lading. *See* "Bill of Lading," p. 17.
withdrawal from association. *See* "Mutual Insurance."

Now at
Amsterdam—vessel without limits of port. *See* "Charter-party," p. 52.

Officers and Crew,
government ship as salvors. *See* "Salvage," p. 198.
not appointed—trial trip. *See* "Collision," p. 74.

Omission
to register mortgage. *See* "Mortgage."

Onus of Proof,
on builders that launch was not at fault. *See* "Collision," pp. 64, 65.
on plaintiff in collision action that defendant's vessel contributed to accident, if defendants plead compulsory pilotage. *See* "Compulsory Pilotage."
on shipowners to excuse themselves if cargo damaged on delivery. *See* "Cargo Claims," pp. 41, 42.
on underwriters to prove unseaworthiness. *See* "Seaworthiness."

Open Policy,
concealment: Held unanimously, affirming the decision of Field, J., and a jury, that where, in open policies following upon each other, the assured has fraudulently declared in reference to certain of these a lesser value as being at risk than was actually at risk thereunder, this is a concealment of material fact, and the underwriter can have the subsequent policies set aside without returning the premium which has been paid. *Rivaz* v. *Gerussi and others* (Court of Appeal, Nov. 19, 1880, Baggallay, Brett and Cotton, L. JJ.).
profits and commission. *See* "Illegal Insurance."
re-insurance against fire: Held, that the usage with regard to open marine insurance policies that such policies attach to the goods as soon as they are shipped, and in the order in which they are shipped, and subject to amendment before or after loss in case of error or omission on the part of the insured or his servants, applies to the case of a fire insurance company when it covers the risk of fire in a marine policy. *Maritime*

Open Policy—*continued.*

Insurance Co., Limited v. *Fire Re-Insurance Corporation, Limited* (Common Pleas, Dec. 13, 1878, and March 14, 1879, Lopes, J.).

Orders from Tow.

See "Tug and Tow."

Outstanding Calls,

transfer of shares. *See* "Mutual Insurance."

Outstandings,

transfer of shares. *See* "Co-ownership."

Overcharges

in ship's disbursements. *See* "Bottomry."

Over-insurance,

value exceeded. *See* "Value in Policy."

wager policies. *See* "Concealment."

Overlooker

failing to detect defects. *See* "Ship Repairers."

Over-payment

on an incorrect adjustment. *See* "Average adjustment."

Overstraining,

salvor receiving damage by. *See* "Salvage," p. 196.

Overtaken

and overtaking vessels. *See* "Collision," pp. 67, 68.

Owner (Cargo).

See "Cargo."

Owner (Ship),

See "Shipowner."

appeal from court of inquiry. *See* "Board of Trade Inquiry."

liable for removal of wreck. *See* "Removal of Wreck."

lien on cargo for freight lost. *See* "Lien."

objecting to excessive interest in bond. *See* "Bottomry."

paying premium to broker who misapplies same—policies. *See* "Lien."

services salving cargo, agency, &c. *See* "Sue and Labour Clause."

Ownery,
change of, with part cargo on board. *See* "At and from."
nationality of ship governed by. *See* "Foreign Flag."
two colliding vessels same owners, underwriters paying total loss. *See* "Collision," p. 57.

Packing and Pressing,
craft risk, trans-shipment. *See* "Inception of Risk."

Painting and Cleaning Bottom,
repairs. *See* "Dock Dues."

Part Cargo,
See "Cargo."
destroyed, half freight in advance. *See* "Freight Advanced."
destroyed, right to full freight. *See* "Freight, Lump sum."
destroyed, fire, right to full cargo after repairs. *See* "Freight"; "Charter-party."
discharged for re-stowage, damage. *See* "Cargo Claims," p. 44.
shipment by another vessel. *See* "Bill of Lading," p. 16.
shipment at seller's risk. *See* "Contract of Sale and Purchase."

Part Claim
withdrawn at reference. *See* "Collision," p. 68.

Part Days
occupied loading and discharging. *See* "Lay Days," p. 141.

Part Owner,
See "Co-ownery."
engaging seamen and apprentices. *See* "Crimping."

Particular Average,
cargo owner's risk. *See* "Bottomry."
definition. *See* "Constructive Total Loss."
putting into port in consequence of. *See* "Port of Distress."

Parts
of bill of lading. *See* "Bill of Lading," p. 17. *Refer* p. 92.

Passed Clear,
Thames Conservancy rules. *See* "Collision," pp. 73, 74.

Passengers,

accommodation for, in cargo-boat, destroyed and not replaced. *See* "Damages not repaired."

contract, excepting perils of the sea. *See* "Life, Loss of."

wrecked on barbarous but inhabited island. *See* "Salvage," p. 200.

wrecked on barren rock—life salvage. *See* "Salvage," p. 194.

Passenger's Luggage,

action by passenger in County Court—goods: Held, that a passenger's luggage is not "goods" within sect. 2 of the County Courts (Admiralty Jurisdiction Amendment) Act, 1869; and there is, therefore, no jurisdiction in a County Court under that Act to try an action by a passenger against a shipowner for the loss of such luggage. *Reg.* v. *The Judge of the City of London Court* (Queen's Bench, Dec. 10, 1883, Day and Smith, JJ.).

contract restricting liability: Held unanimously, reversing a decision of the Supreme Court of Mauritius, that where a passenger by a steamship signs a ticket, from England to the Mauritius, in England, whereby the steamship owners free themselves from responsibility for loss of passenger's luggage, such contract is governed by English law, which permits a common carrier to restrict his liability by express contract. *The Peninsular, &c. S.S. Co.* v. *Shand* (Privy Council, July 20, 1865, Right Hon. Knight-Bruce and Turner, L. JJ., and Sir J. T. Coleridge).

Passing Ship,

loan of navigator. *See* "Salvage," p. 201.

Passing Survey,

damage repairs. *See* "Collision," p. 70.

Payment,

on arrival of ship. *See* "Bottomry."

underwriters paying in error. *See* "Average adjustment."

when convenient. *See* "Sale of Ship."

Payment into Court,
costs up to date of. *See* "Salvage," p. 205.

Perils and Damages,
however caused—unseaworthiness. *See* "Cargo Claims," pp. 35, 36.

Perils of the Seas,
See "Bottomry"; "Seaworthiness."
collision not a peril of the seas. *See* "Cargo Claims," pp. 37, 38. *Refer* pp. 50, 69.
dangers of navigation. *See* "Charter-party," p. 50.
exception of—cancelling date. *See* "Charter-party," p. 48.
extraordinary, though invisible and unascertained. *See* "Seaworthiness."
life salvage—towing vessels in distress. *See* "Deviation." *Refer* p. 40.
passenger's contract. *See* "Life, Loss of."
proximate or remote cause of loss. *See* "Seaworthiness."
proximate or real cause of loss. *See* "Cargo Claims," p. 37. *Refer* pp. 26, 29.
shore to ship at ship's risk. *See* "Charter-party," p. 52.
usual and unusual. *See* "Seaworthiness."

Perishable Goods,
duty to forward with all dispatch. *See* "Cargo Claims," p. 40.

Pilot,
as salvor. *See* "Salvage," p. 203.
duty to note vessel dragging. *See* "Compulsory Pilotage."
giving improper orders at the suggestion of master. *See* "Compulsory Pilotage."
refusing to take charge. *See* "Salvage," p. 203.

Pilotage,
See "Compulsory Pilotage."
pilot carried out to sea—ship broker's liability: Held, that the sum of 10*s.* 6*d.* per day due to a pilot who had been carried out to sea, under sect. 357 of the

Pilotage—*continued.*

Merchant Shipping Act, 1854, is not a pilotage due under sect. 363, and cannot, therefore, be recovered from the ship's broker. *Morteo* v. *Julian* (Common Pleas, May 2, 1879, Denman and Lindley, JJ.).

Plundering

by natives. *See* "Capture and Seizure."

Policy,

construction of. *See* "Cargo Claims," p. 37.

lapsing, while vessel at sea. *See* "Time Policy."

lien of insurance broker upon. *See* "Lien."

part cargo laden, inception of risk. *See* "At and From."

proof of interest. *See* "Illegal Insurance."

sale of cargo to arrive, right to. *See* "Sale of Cargo."

unstamped, estoppel of plea of. *See* "Mutual Insurance."

unstamped—illegal insurance: Held unanimously, affirming the decision of Mathew and Day, JJ., that sects. 13 and 14 of 30 & 31 Vict. c. 23, do not make an unstamped policy illegal, but that they simply provide for penalties for the making thereof. *The Barrow-in-Furness Mutual Ship Insurance Co., Limited* v. *Ashburner* (Court of Appeal, May 15 and 16, 1885, Brett, M. R., and Baggallay and Bowen, L. JJ.).

unstamped—refusal to pay calls. *See* "Mutual Insurance."

valid—seal and signature. *See* "Mutual Insurance."

void without notice. *See* "Mutual Insurance."

Port of Adjustment.

See "General Average."

Port of Distress,

See "Abandonment"; *also* "Bottomry."

cargo discharged at, voyage abandoned. *See* "Freight Advanced"; "General Average."

cargo discharged and sold at. *See* "*Pro ratâ* Freight."

general average act: Held unanimously, affirming the decision of the Queen's Bench, that where a vessel puts into a port of distress to repair an injury occasioned by a general average sacrifice, the whole of the expenses of putting into, and also of leaving, the port, and of warehousing and re-loading the goods, are the subject

Port of Distress—*continued.*

of general average. The principle which underlies the whole doctrine of general average contribution is that the loss, immediate and consequential, caused by a sacrifice for the benefit of cargo, ship, and freight, should be borne by all. *Attwood* v. *Sellar* (Court of Appeal, Feb. 23 to 26, and March 24, 1880, Bramwell, Baggallay, and Thesiger, L. JJ.). *See Svendsen* v. *Wallace.*

general average expenses. *See* "Machinery Claims."

landing, storing, and forwarding cargo. *See* "Sue and Labour Clause"; "Constructive Total Loss."

part cargo sold, right to whole freight. *See* "Freight, Lump sum."

particular average act—reloading charges: Held unanimously, affirming the decision of the Court of Appeal (Brett, M. R., and Bowen, L. J., Baggallay, L. J., dissenting), and reversing the decision of Lopes, J., that where a vessel laden with cargo springs a leak in consequence of perils of the sea, and puts into port for repairs, the expenses of reloading the cargo after the repairs have been completed are not general average expenses. *Svendsen* v. *Wallace* (House of Lords, March 19, 20, 23, and May 12, 1885, Lords Blackburn, Watson, and Fitzgerald). *Attwood* v. *Sellar* dissented from.

sale—right to proceeds, risk of proceeds. *See* "Total Loss."

special charges, free from average. *See* "Sue and Labour Clause."

Port Authorities

stopping discharge. *See* "Lay Days," p. 138.

Port Facilities

of shipment exceeding supply of cargo—production of mines. *See* "Lay Days," p. 140.

Port, Limits of.

See "Limits of Port."

Port or Ports

of loading—risky port. *See* "Concealment."

Port-side to Port-side,
Thames Conservancy Rules. *See* "Collision," p. 73.

Port Improperly Fastened,
damage to cargo. *See* "Indemnity Association;" "Seaworthiness."

Possessory Lien,
material men and mortgagees. *See* "Mortgage."
ship repairers. *See* "Lien."

Preliminary Act,
improper answers. *See* "Collision," p. 69.

Premature Arrest.
See "Bottomry."

Premium,
See "Mutual Insurance"; "Necessaries."
included in demurrage. *See* "Demurrage."
re-insurance—arrival of ship before effecting of insurance: Held unanimously, affirming the decision of Lord Coleridge, C. J., that where a voyage policy has been effected by way of re-insurance on the cargo of a vessel lost or not lost, which vessel has, unknown to both parties, arrived at the port of destination in safety, and landed her cargo undamaged before the making of the policy, it is a good contract of insurance, and the underwriter is entitled to the premium which the assured has agreed to pay. The voyage having commenced under the conditions necessary to make the underwriters liable, the risk attached, although the chance of loss during the performance of the voyage was at an end. *Bradford* v. *Symondson* (Court of Appeal, March 1, 3, and April 1, 1881, Bramwell, Baggallay, and Brett, L. JJ.).
set-off to claim—unpaid premium: Held unanimously, reversing the decision of Lord Coleridge with a jury, and a subsequent decision of Denman and Lopes, JJ., that in an action by the assignees of a policy under the Policies of Marine Assurance Act, 1868 (31 & 32 Vict. c. 86), which, whilst enabling assignees of marine policies to sue in their own names, provides that "the

Premium—*continued.*

defendant in any action shall be entitled to make any defence which he would have been entitled to make if the said action had been brought in the name of the person by whom or on whose account the policy had been effected,"—the underwriter is not entitled to set off a debt due to him from the person by whom the policy had been effected, the action being one for unliquidated damages in which a set-off could not be pleaded before the Judicature Acts, and those Acts not making a set-off or counter-claim a defence within the Policies of Marine Assurance Act, 1868. *Pellas* v. *Neptune Marine Insurance Co.* (Court of Appeal, Nov. 20, 21, and Dec. 18, 1879, Bramwell, Brett, and Cotton, L. JJ.).

set-off—unpaid premium: Held, that where a shipowner has insured several steamships with a company, each separately, and having separate accounts rendered him for each, if one be lost the insurance company has the right to set off the premium unpaid on each of the vessels before paying the loss. *Fletcher* v. *Newcastle S.S. Insurance Co.* (Newcastle Assizes, July 20, 1887, Mathew, J.).

unpaid—broker's lien. *See* "Lien." *Refer* p. 168.

Presumption

of negligence. *See* "Cargo Claims," p. 44.

of unseaworthiness—owners to give rebutting evidence. *See* "Seaworthiness."

Principal and Agent.

See "Agent and Principal."

Printed and Written

clauses, values of. *See* "Charter-party," p. 52.

Priority of Claims,

lien on sub-charter. *See* "Seaman's Wages."

material men, &c. *See* "Mortgage," *also* "Lien."

Probabilities of Loss,

lapse of policy during voyage. *See* "Time Policy."

Probable inevitable
loss of thing sacrificed. *See* "General Average."

Proceeding to Sea,
Mersey pilotage. *See* "Compulsory Pilotage."

Proceeding without Repairs,
after stranding. *See* "Cargo Claims," pp. 42, 44.

Proceedings
in Ireland and England. *See* "Collision," p. 60.
at home and abroad. *See* "Collision," p. 60.

Proceeds of Sale,
right to and risk of. *See* "Total Loss."
sub-agent selling beyond limit of price. *See* "Sale of Ship."

Profits
and commission, insurance of. *See* "Illegal Insurance."

Profits of Sub-charter,
seaman's lien on. *See* "Seaman's Wages."

Prompt Dispatch
in turn. *See* "Lay Days," p. 140.

Proof of Unseaworthiness,
always on underwriter. *See* "Seaworthiness."

Propelled by Oars,
ship. *See* "Barge not propelled by oars."

Pro ratâ Freight,
abandoned vessel, salved. *See* "Abandonment."
cargo-owners demanding delivery of damaged cargo at intermediate port—freight: Held unanimously, that where in consequence of an accident for which the shipowners are not accountable, cargo has become damaged at an intermediate port short of port of destination, and requires to be dried in order to prevent further deterioration, the shipowner at the request of the owners of cargo is bound to take steps to prevent said deterioration; and if he refuses to land the cargo unless full freight be paid, and refuses an offer of *pro ratâ* freight, insisting upon carrying the cargo to its destination so as to secure full freight, he renders

Pro ratâ Freight—*continued.*

himself liable for the damage thereby sustained by the cargo. *Notara* v. *Henderson* (Queen's Bench, Jan. 21 and May 14, 1870, Cockburn, C. J., Mellor and Lush, JJ.).

condemned vessel—lien for expenses: Held, that where a ship and cargo have been salved, and the ship being condemned the cargo has been sold by order of Court on the petition of the salvors, the shipowner is entitled to *pro ratâ* freight on a new inferential contract, inferred through inaction of cargo-owner to accept the cargo at a port short of its destination. The master has authority to appoint an agent, both for ship and cargo, where the cargo-owner is not represented, but the master's possessory lien is not thereby transferred to such agent. *The Soblomstein* (Admiralty, Dec. 11, 1866, Dr. Lushington). *Refer* p. 199.

delivery of cargo short of destination. *See* "Charter-party," p. 47.

freight in dispute. *See* "Abandonment."

sale of cargo at intermediate port: Held unanimously, that where a vessel puts into a port of distress as a consequence of sea perils, and, in order to pay for the necessary repairs to the ship, the captain sells a portion of the cargo, no freight has become due on the cargo so sold, even if the price realized is more than the price ruling at the port of destination. The only case in which *pro ratâ* freight can become payable is, when the captain is able and willing to carry on the whole cargo, but the charterer or shipper desires to have the goods at an intermediate port, and the captain gives them up at the owner's request, express or implied, then there is an implied promise to pay freight, not the stipulated freight, but freight *pro ratâ*. *Hopper* v. *Burness* (Common Pleas, Feb. 23, 1876, Brett, Archibald and Lindley, JJ.). *Refer* pp. 3, 239.

voyage stopped by cargo-owners. *See* "Freight."

Provisions and Coals,

time charter—master's draft. *See* "Master's Wages, &c."

Proximate
and remote cause of loss. *See* "Bottomry"; "Cargo Claims," p. 37; "Seaworthiness." *Refer* p. 28.

Prudent uninsured Owner,
See "Abandonment"; "Absolute Total Loss"; "Constructive Total Loss."

Pumps,
air-chamber of donkey, bursting. *See* "Machinery Claims."
damaged vessel, unrepaired. *See* "Termination of Risk."
fuel for donkey boiler. *See* "General Average."

Purchase
of wreck—annulling sale. *See* "Wreck."

Purchase-Money
at interest, payment when convenient. *See* "Sale of Ship."

Purchaser
of cargo, chartering ship. *See* "Stopping in Transit."
of cargo, not liable for freight, &c. *See* "Bill of Lading."
of shares or ship, not liable for supplies. *See* "Co-ownership."

Putting back
to port of shipment. *See* "General Average," and p. 117.

Quay Berth,
ready, as ordered. *See* "Lay Days," p. 140.

Questions
improperly answered—preliminary act. *See* "Collision," p. 69.

Racing
of engines—salvor. *See* "Salvage," p. 196.

Railway Wharf,
to discharge at. *See* "Lay Days," p. 138.

Raising
sunken wreck and cargo—lien. *See* "Salvage," p. 201.
sunken wreck, lien on cargo. *See* "Limitation of Liability."

Ratification
of insurance after loss. *See* "Freight."

Rats
eating and destroying cargo. *See* "Cargo Claims," p. 39.
eating through pipe, and so admitting sea-water to cargo. *See* "Cargo Claims," p. 39.

Ready Quay-berth
as ordered. *See* "Lay Days," p. 140.

Reasonable Dispatch,
reasonable time. *See* "Lay Days," pp. 135 to 139.

Receipts
in lieu of bill of lading—general ship—time charter. *See* "Lien." *Refer* p. 144.

Recovering
more than value in policy. *See* "Value in Policy."

Recovery
by underwriters of amount overpaid on incorrect adjustment. *See* "Average adjustment."

Refusal of Appeal,
master and owner. *See* "Board of Trade Inquiry."

Refusal of Charterer
to load, class withdrawn. *See* "Charter-party," p. 49.

Refusal of Pilot
to take charge of vessel. *See* "Salvage," p. 203.

Register, Registration,
launch unregistered, not a ship. *See* "Limitation of Liability."
mortgage unregistered, effect. *See* "Mortgage."
shares unregistered and fraudulently registered. *See* "Co-ownership." *Refer* pp. 21, 99.
ship unregistered. *See* "Foreign Flag."
tonnage, new and old register. *See* "Limitation of Liability."

Registrar,
costs of reference, both claim and counter-claim found fair. *See* "Collision," p. 69.
judgment by consent, improperly set aside. *See* "Collision," p. 71.
report, commission of management. *See* "Managing Owner."

Regular Turn.
See "Lay Days," p. 140.

Regulation Lights.
See "Compulsory Pilotage."

Regulations
for preventing collisions at sea. *See* "Collision."

Re-insurance
after arrival. *See* "Premium."
not so stated in effecting policy: Held unanimously, that where one underwriter effects with another underwriter an ordinary policy "on cotton" on a named vessel for a specific voyage, the fact that it is not expressly stated that this is a re-insurance does not vitiate the policy, the nature of the risk not being altered thereby, and the description in the policy being sufficient to cover the interest of the insurer. *Mackenzie* v. *Whitworth* (Court of Appeal, Nov. 15, and Dec. 10, 1875, Lord Chancellor Cairns, Blackburn and Brett, L. JJ.).
notice of abandonment. *See* "Abandonment."
underwriter's salving expenses. *See* "Sue and Labour Clause."

Reloading
after forced discharge. *See* "Port of Distress."

Remote
and proximate cause of loss. *See* "Seaworthiness," and pp. 26, 28, 37.

Removal of Wreck.
liability of owner and underwriter: Held unanimously, affirming the decision of Cleasby, B., that where a

Removal of Wreck—*continued.*

harbour master, acting within sect. 56 of the Harbour Act, 1847, removes a wreck obstructing the approaches to the harbour, the owner and not the underwriter who has paid a total loss, is the "owner" liable for the expenses of removing the wreck within the meaning of the Act. *The Earl of Eglinton* v. *Norman* (Court of Appeal, April 21, 23, 24 and 26, 1877, Lord Coleridge, C. J., Bramwell, J. A., and Brett, L. J.).

lien on cargo. *See* "Limitation of Liability," *also* "Salvage," p. 201.

Remuneration

for services salving. *See* "Salvage," p. 199. *Refer* p. 222.

Renewal

of "wear and tear"—damage revealing rotten wood. *See* "Collision," p. 59.

Rent

of building-yard—distraint. *See* "Lien."

Repairs,

auxiliary screw, avoiding necessity for. *See* "General Average."

advantaging owner. *See* "Collision," pp. 59, 70.

amounting to over 100 per cent. of value in policy. *See* "Abandonment," *also* "Sue and Labour Clause."

damaged ship—good safety, unrepaired. *See* "Termination of Risk."

demurrage to salvor during. *See* "Salvage," p. 196.

enabling vessel to pass survey for class. *See* "Collision," p. 70.

enhancing value of vessel. *See* "Abandonment."

making vessel fit for certain trades. *See* "Constructive Total Loss."

mortgagee in possession—repairer's lien. *See* "Mortgage."

not effected—cabins not replaced. *See* "Damages not repaired."

not effected, cargo damaged in consequence. *See* "Cargo Claims," pp. 42, 44.

part owners—part underwriters. *See* "Dock Dues."

Repairs—*continued.*
port of distress—selling part cargo. *See* "*Pro ratâ* Freight."
postponed till after expiry of policy, no loss of hire. *See* "Chartered Freight."
repairers in possession—priority. *See* "Lien."

Res salved,
life salvage. *See* "Salvage," p. 201.

Rescuing
crew and passengers from danger. *See* "Salvage," pp. 194, 200.

Re-shipment,
of damaged cargo. *See* "Discharge of Cargo," and pp. 33, 123, 182.

Re-stowage,
forced discharge of part cargo. *See* "Cargo Claims," p. 44.

Rigging,
slack and parting, masts cut away. *See* "General Average."

Riot,
strikes, or other accident—snowstorm. *See* "Lay Days" p. 134.

Risk,
commencement of. *See* "At and From," and pp. 92, 115, 173.
craft, transhipment, &c. *See* "Craft Risk," *also* "Inception of Risk."
collision—stop and reverse. *See* "Collision," pp. 66 to 76.
shore to ship, at ship's risk. *See* "Charter-party," p. 52.
termination of. *See* "Liberty to Dock"; "Time Policy."

Risky Port,
covered by "port or ports." *See* "Concealment."

River Frozen,
cargo delayed. *See* "Lay Days," p. 137.

River St. Lawrence,
"No St. Lawrence." *See* "Warranties."

Rockets,
duty to burn, after collision. *See* "Collision," p. 57.

Rules
of mutual insurance association. *See* "Mutual Insurance."

Sacrifice,
See "General Average."
of ship to cargo. *See* "Wreck."

Safe Port,
nearest safe port, &c. *See* "Charter-party," pp. 47, 48.

Safely get
afloat at all times of the tide—lighterage. *See* "Charter-party," pp. 47, 48. *Refer* pp. 53, 136.

Safety,
damaged ship in good safety. *See* "Termination of Risk."

Sailing Master,
Clyde regulations. *See* "Collision," p. 74.

Sailing Vessel,
salvor taking assistance of steamers. *See* "Collision," p. 196.
speed of, on high seas—fog. *See* "Collision," pp. 66, 70.

St. Lawrence,
"No St. Lawrence"—gulf or river. *See* "Warranties."

Sale of Cables, &c.,
under Acts 1864 to 1874. *See* "Chain Cables and Anchors."

Sale and Purchase.
See "Contract of Sale and Purchase"; *also* "Acceptance in exchange for documents."

Sale of Cargo,
See "Cargo."
condemned vessel. *See* "Constructive Total Loss."
for freight, assets insufficient. *See* "Bill of Lading," p. 19.
intermediate port. *See* "*Pro ratâ* Freight."
master's authority. *See* "Abandonment."

Sale of Cargo—*continued.*
part sold at port of distress. *See* "Freight, Lump-sum."
proceeds, right to and risk of. *See* "Total Loss."
transfer of interest—sale to arrive: Held, reversing the decision of Vice-Chancellor Wood, that where a cargo is sold afloat at a loss upon its original cost, and for less than the amount originally insured, such sale carries with it the policies of insurance for the amount of the original invoice, and if the vessel be lost subsequent to such sale the purchaser of the cargo is entitled to the whole of the proceeds of such insurance. *Ralli* v. *Universal Marine Insurance Co.* (Chancery Appeal, Jan. 21, 22 and 31, 1862, judgment of Knight-Bruce, L. J.).
wreck—sale annulled. *See* "Wreck."

Sale of Shares,
liability for club calls. *See* "Mutual Insurance."
liability for outfit, current voyage. *See* "Co-ownership."
mortgaged before sale. *See* Co-ownership."

Sale of Ship,
according to surveyor's recommendation and after condemnation. *See* "Constructive Total Loss," and p. 2.
after refusal of abandonment. *See* "Constructive Total Loss."
bottomry bond, sale not realizing amount of. *See* "Bottomry."
buyer not liable for accounts unpaid. *See* "Co-ownership," and p. 170.
foreign ship—default action. *See* "Collision," p. 70.
marshall reporting in favour of. *See* "Collision," p. 70.
master's authority to sell. *See* "Abandonment"; "Master's Agency."
master's lien for disbursements on proceeds. *See* "Master's Wages."
minority shareholders obtaining. *See* "Co-ownership."
mortgage action. *See* "Mortgage."
necessaries action. *See* "Lien."
no bill of sale. *See* "Bill of Sale."
no sufficient grounds for. *See* "Bottomry."

Sale of Ship—*continued.*

payment when convenient, subject to interest: Held, that where in an agreement for the purchase of shipping shares it is stipulated that a portion of the purchase-money should be payable in whole or in part at the convenience of the purchasers, subject to payment of a certain agreed interest, it is a sufficient defence to an action for payment of the balance to plead that it is not convenient to pay, even although the agreement be one made ten years ago, and that as long as the interest is duly paid the seller has no remedy at law. *Crawshaw* v. *Hornstedt and Garthorne* (Court of Appeal, March 2, 1882, Brett, M. R., and Bowen and Fry, L. JJ.).

proceeds, order of payment out of. *See* "Lien."

proceeds, right to and risk of. *See* "Total Loss."

shareholders must prove strong case to obtain. *See* "Co-ownership."

shares not registered, mortgagee selling. *See* "Co-ownership."

sub-agent—price beyond lowest margin: Held unanimously, confirming the decision of Hall, V.-C., that when a shipowner consigns a vessel for sale at a limit of price to agents abroad, who communicate with a firm at another port, the firm so communicated with become the sub-agents of the principal, and liable to account to him for the proceeds of the sale of the ship, and they are not entitled to take the ship over at the limit when they have already made a contract of sale at an enhanced price. *De Bussche* v. *Alt* (Court of Appeal, Dec. 10, 11, 1877, Jan. 14, 15, 18, March 12, 1878, James, Baggallay, and Thesiger, L. JJ.).

surveyors recommending. *See* "Constructive Total Loss."

Saloon,

in cargo boat destroyed, and not replaced. *See* "Damages not repaired."

Salt-water Damage,

insufficient dunnage. *See* "Cargo Claims," p. 45.

Salt and Fresh Water,

draught of water. *See* "Charter-party," p. 50.

Salvage. PARTICULARS of recent Salvage Cases,

Decision given. Month.	Year.	Name of S.S. Disabled.	Name of S.S. Assisting.	Value. S.S. Disabled.	Value. Cargo (if any) and Freight.	Value. S.S. Assisting.	Value. Cargo (if any) and Freight.
				£	£	£	£
Feb.	1886..	"Matthew Bedlington."	"Sea King" (tug)	.. Not given ..		.. Not given.	
March	1886..	"Glenmore".....	"Constance"	4,000	2,027	10,000	2,740
April	1886..	"Hermann".....	"Chicago"	19,000	28,066	33,000	30,000
May	1886..	"Conseil".....	"Saltwick"	46,000		34,000	
Nov.	1886..	"Wilster".....	"Lambeth"	4,000	None	16,000	None
Dec.	1886..	"Ponca"	"Brittany"	14,000	16,224	12,000	..
Dec.	1886..	"Werra"	"Venetian"	104,166	115,510	70,000	21,269
Nov.	1886..	"Wetherby".....	"Ayrshire"	20,000	17,675	15,000	13,000
Oct.	1886..	"Billow"	"Sir Garnet Wolseley."	10,000	1,350	17,000	2,870
Aug.	1886..	"G. E. Wood" ..	"Pierremont"	7,500	640	12,000	1,550
May	1886..	"Hart"	"Travancore"	19,250		20,000	..
April	1886..	"Cephalonia"	"Viola".....	73,000	37,195	21,000	15,072
Feb.	1886..	"Volmar".....	"Ella Sayer"	8,000	11,000	20,000	3,950
Feb.	1886..	"Queen"	"Raglan".....	25,000	..	18,000	..
Jan.	1886..	"Raleigh's Cross"	"Wiltshire".....	8,500		8,000	550
Feb.	1887..	"Benefactor"	"Empress"	10,000	13,381	24,000	..
March	1887..	"Emmy Haase" ..	"Inverleith"	9,000	9,241	14,000	..
March	1887..	"Holland"	"Bernard Hall" ..	131,039		35,000	65,526
March	1887..	"Hope".....	"James Malam"..	4,446	9,873	10,000	
April	1887..	"Albano".....	"Wells City"	18,000	14,099	23,000	14,576
April	1887..	"Borghese".....	"Heraclides"	22,000	28,000	40,000	96,075
April	1887..	"Hekla"	"Inishtrahull"....	26,000	1,300	30,000	30,000
May	1887..	"Harvest"	"Ceres".....	10,500	933	.. Not stated ..	
June	1887..	"Horsley"	"Euclid"	11,000	..	6,000	..
July	1887..	"Denia"	"Cyclone".....	2,500		24,000	
	1887..	"Clan Monroe" ..	"Ashton".....	15,000	22,826	18,000	17,804
June	1887..	"Gleadowe".....	"Scaramanga"....	14,500	..	17,000	957
Aug.	1887..	"Ponca"	"Robert Ingram"	16,000	17,972	7,000	7,247

with Amounts Tendered and Awarded.

Nature of Services.	Time occupied Assisting.	Amount paid into Court.	Award.	Court.	Judge.
		£	£		
Towing off beach in Mersey, tug having had to slip.	Not mentioned	25	50	Liverpool County	Collier.
Lost propeller.....	5½ hours	200	Tender sufficient.	Cinque Ports	Cohen, Q.C.
Engines disabled	31 ,, ...	..	1,700	High Court of Justice.	Butt.
Engines disabled	30 ,, ...	..	1,200	,, ,,	Hannen.
Engines disabled	23 ,, ...	150	Tender sufficient.	,, ,,	Hannen.
Engines disabled	26 ,, ...	450	700	,, ,,	Hannen.
Lost propeller	1,000 *m.*, 6 days	..	7,000	,, ,,	Hannen.
Lost propeller	500 *m.*, 3½ days	..	1,200	,, ,,	Hannen.
Short of fuel	About 4 days ..	..	1,500	,, ,,	Hannen.
Engines disabled	16 hours	150	250	,, ,,	Butt.
Engines disabled	3½ days	..	1,800	,, ,,	Butt.
Engines disabled	6 ,, ...	2,500	3,500	,, ,,	Butt.
Engines disabled	30 hours	600	900	,, ,,	Hannen.
Towing off ground in Black Sea.	....	..	200	,, ,,	Hannen.
Loss of rudder	24 hours	600	700	,, ,,	Hannen.
Loss of propeller	5 days	750	1,200	,, ,,	Butt.
Broken shaft	2 days 8 hours	..	1,200	,, ,,	Butt.
Loss of propeller	48 hours	..	1,500	,, ,,	Butt.
Broken shaft	72 ,, ...	..	1,500	,, ,,	Butt.
Loss of rudder	9 days	..	4,800	,, ,,	Butt.
Loss of propeller	4 ,, ...	1,500	2,500	,, ,,	Butt.
Broken shaft	1 day	..	700	Court of Session, Edinburgh.	Lord Kinnear
Engines disabled	110 miles.....	..	350	High Court of Justice	Hannen.
Broken shaft	8 hours	..	350	,, ,,	Butt.
Engines disabled	28 ,, ...	380*l.* and costs accepted		,, ,,	Hannen.
Towing off reef in Red Sea	....	..	2,000	,, ,,	Hannen.
Propeller broken, towage, and detention.	21 hours	..	1,210	,, ,,	Butt.
Lost tail-end shaft and propeller.	24 ,, ...	..	500	,, ,,	Hannen.

Salvage—*continued.* *See* "Sue and Labour Clause."
abandoned vessel—*pro ratâ* freight. *See* "Abandonment."
abandoned vessel—crew wishing to return. *See* "Abandonment."
agreement—"no cure no pay:" We, the undersigned underwriters on steamer, of , now lying (?) sunk near , do hereby agree that , of , shall undertake on our behalf the salvage of this steamer, we agreeing to pay them or their agents in London per cent. in value of whatever they may successfully salve and convey into safety in . Payment of whatever may be due to the salvors under this agreement is to be made within fourteen days of the amount being ascertained; and it is agreed that are to have an absolute lien over whatever they may salve under this agreement until the amount due to them is fully paid. The salvors' contract is ended when the steamer, or if she become a wreck whatever portions of her, or of her equipment they may salve, has been conveyed in safety to . The salvors are entitled to use during the salvage operations, free of cost, any or all of the properties and appliances of the steamer , and they shall in no case be liable for any further damage that may arise or result to the said steamer or her equipments, &c.
agreement between masters: Held unanimously, affirming the decision of Sir Robert Phillimore, that where the master of a vessel found passengers of another vessel (550 pilgrims) wrecked on a rock in the Red Sea in fine weather, and refused to carry them on to Jeddah for less than 4,000*l.*, and the master of the wrecked vessel was by such refusal compelled to sign an agreement for that amount, and the service was performed without difficulty or danger, the agreement was inequitable and should be set aside, and 1,800*l.* only allowed the salvors. *The Medina* (Court of Appeal, Dec. 7, 1876, James, L. J., Baggallay and Brett, JJ. A.).
agreement between masters—costs of action: Held, that an agreement insisted upon by the master of the

Salvage—*continued.*

salving ship, and unwillingly agreed to and signed by the master of the salved ship, whereby an exorbitant amount was stipulated for to be paid by the owners of the latter to the owners of the former vessel, will be set aside by the Court, and a fair amount awarded, and that in such case each party shall bear their own costs. *The Silesia* (Admiralty, June 23, 24 and 29, 1880, Sir R. Phillimore and Trinity Masters).

agreement between masters, excessive amount. *See* "General Average." *Refer* pp. 198, 206.

amount underwritten already paid in full, underwriter's liability. *See* "Sue and Labour Clause."

appeal from County Court: Held, that there is no appeal from the decision of a County Court in a salvage case where a tender of less than 50*l.* has been upheld and pronounced sufficient. *The Fyenoord* (Admiralty, March 7, 1876, Sir R. Phillimore).

arrest of ship in excessive amount: Held, that in a salvage action in which the plaintiffs arrest the salved ship for 3,000*l.*, and the Court on a value of 14,000*l.* awards them 450*l.*, the salvors are entitled to pay all the costs and expenses of finding bail for 3,000*l.*, such sum being unreasonably excessive, although the defendants in the salvage action had not applied to have the amount of bail reduced. *The George Gordon.* (Admiralty, Feb. 28, 1884, Butt, J.)

award appealed against: Held unanimously, that in salvage appeals the Court of Appeal will not interfere with the amount of an award, unless the amount has been estimated on wrong principles, or on a misapprehension of the facts, or unless it is in the opinion of the Court exorbitant in the sense of being beyond all reason. *The Lancaster* (Court of Appeal, Dec. 7, 1883, Brett, M. R., and Baggallay and Bowen, L. JJ., assisted by Nautical Assessors).

Board of Trade vessel—government ship: Held unanimously, affirming the decision of Sir R. Phillimore, that a vessel employed by the Board of Trade for commercial purposes in and about a public harbour,

Salvage—*continued.*

and owned by the Board of Trade, is not a government ship within the meaning of the Merchant Shipping Act, 1854, sects. 484, 485; and the Board of Trade are consequently entitled to salvage reward in respect of services rendered by such vessel. *The Cybele* (Court of Appeal, Jan. 22, 1878, James, Baggallay, and Thesiger, L. JJ.).

damage to salvor—demurrage during repairs: Held, that where a vessel in rendering salvage services sustains damage without negligence on her part, she is entitled to be repaid for such damage and for demurrage during repairs by the owners of the vessel salved, in addition to and distinct from the amount of the salvage award. *Mud Hopper No.* 4 (Admiralty, April 4 and 5, 1879, Sir R. Phillimore).

damage to salvor—loss of profits—sailing vessel seeking assistance of steamers to salve: Held, that in a salvage action evidence of the loss of profits and damage sustained by the salving vessel is admissible as evidence, but it is not to be taken in ordinary cases as a fixed figure always to be allowed as in the nature of damage, and then to superadd to that the amount for salvage service as distinct, they must be considered, under ordinary circumstances, together. In special cases, however, as where a sailing vessel had sought the assistance of a steam vessel on an agreement to share the salvage award, and the steam vessel had done the towage, and received damage thereby, the proper way is to allow an amount as salvage, and a further amount on account of damage, so as to exclude the sailing vessel from participation in the amount allowed by reason of the damage. *The Sunniside* (Admiralty, May 24, 1883, Sir James Hannen, assisted by Trinity Masters).

damage to salvor—demurrage—over-straining—racing of engines: Held unanimously, affirming the decision of the Vice-Admiralty Court of Malta, that where, in rendering salvage services, a ship has sustained actual damage and loss, which is ascertain-

Sal.

Salvage—*continued.*

able, it is desirable that evidence thereof be admitted, and that the Court should, where there is fund sufficient in the salved property for the purpose, without depriving the owner of the benefit of the salvage, award the amount of such loss and damage, as, for instance, demurrage, depreciation by over-straining, racing of engines, &c., loss by loss of charter, and cost of repairs, in addition to the amount of the salvage award. *The De Bay* (Privy Council, May 29, 30 and 31, and June 30, 1883, Right Hons. Sir Barnes Peacock, Sir Robert P. Collier, Sir James Hannen, Sir Richard Couch, and Sir Arthur Hobhouse).

derelict vessel, abandoned by salvors, but subsequently salved — no engagement of salvors: Held, that where a vessel falls in with a derelict ship, and a volunteer crew is put on board, who after navigating her for a time abandon her, and another volunteer crew is put on board, and the vessel is subsequently brought into port, the first volunteer crew and their vessel are not entitled to participate in the salvage award, even although they have rigged the jury-mast, which was utilized in bringing the derelict into port. The principles of law governing the case are laid down in *The Undaunted* (Lush. 90): "Salvors who volunteer go out at their own risk for the chance of earning reward, and if they labour unsuccessfully, they are entitled to nothing. But if men are engaged by a ship in distress, whether generally or particularly, they are to be paid according to their efforts made, even though the labour and service may not prove beneficial to the vessel." *The Killeena* (Admiralty, March 9, 1881, Sir R. Phillimore and Trinity Masters). *See also Idem*, "meritorious services;" *and* "unsuccessful attempts."

distribution of award: Held, that where salvors disagree as to the distribution of an award, they should, under the Merchant Shipping Act, 1854, s. 104, enforce their claims before magistrates if under 200*l.*, and not go

Salvage—*continued.*

before a jury. *Atkinson* v. *Woodall* (Exchequer, May 3, 1862, Pollock, C. B., and Wilde, B.).

excessive number of men put on board—misconduct of salvors—defying master: Held, that where salvors, in response to a signal of distress, board a vessel in numbers greater than what is required, having regard to the nature of the services, and remain on board in defiance of master and crew, the Court will only award salvage on the basis of the services having been rendered by a lesser number of men. *The Marie* (Admiralty Cinque Ports, April 19 and 20, 1882, Judge A. Cohen, Q. C.).

expenses incurred by cargo underwriters; and ship-owner's liability. *See* "Cargo Claims," p. 45.

expenses, lien for. *See* "*Pro ratâ* Freight," and p. 199.

expenses, total loss policy. *See* "Sue and Labour Clause."

expenses, underwriters' ineffectual attempts — re-insurance. *See* "Sue and Labour Clause."

government ship—officers and crew entitled to reward: Held unanimously, reversing the decision of Sir R. Phillimore, that the commander of a government ship has no right to impose an agreement upon the master of a ship in distress, whereby a fixed sum is made payable for services rendered, as under the Merchant Shipping Act, 1854, s. 484, the services of such ship are not to be rewarded. The officers and crew of a government ship, although having no right to make any agreement as to their reward, are nevertheless entitled to compensation on a liberal scale for services rendered. *Cargo ex Woosung* (Court of Appeal, May 4, 1876, James, L. J., Baggallay, J. A., and Lush, J.).

government transport: Held, that a steamer chartered by the government as a transport on "government form" is not limited to the government in such a way as to deprive her owners of the right to reward for services rendered by her under the directions of the Queen's naval officers commanding at the place where

Salvage—*continued.*

she is stationed. *The Nile* (Admiralty, May 4 and 11, 1875, Sir R. Phillimore).

government transport—assisting another transport: Held, that the owners, master, and crew of a steamship chartered to government as a transport on "government form," by which it is provided that "when necessary" they "will be required to tow other vessels," are nevertheless entitled to recover in the case of extraordinary towage services for salvage, even though the services be rendered with the assistance of officers and seamen of the navy, and the salved vessel be laden with government stores. *The Bertie* (Admiralty, June 3, 1886, Sir James Hannen).

indirect services without engagement—collision: Held unanimously, affirming the decision of Sir R. J. Phillimore, that where two vessels are in collision and a salvor renders service to one without a request from or engagement by the other, and the latter is thereby secured from a position of immediate danger, such service being a direct benefit to both vessels, entitles the salvor to salvage reward from both. The right to be paid for salvage services accrues if they are rendered when a vessel is so circumstanced that a prudent man would accept them; the danger must be direct and immediate, but acceptance of the service is not absolutely necessary. *The Vandyck* (Court of Appeal, Nov. 23, 1881, and March 8, 1882, Lord Coleridge, C. J., and Brett and Holker, L. JJ.).

insurance—total loss only, liability of underwriters for salvage expenses. *See* "Sue and Labour Clause."

liability of salved goods to subsequent salvage, &c. expenses. *See* "General Average."

lien of agent for charges: Held, that where a shipping agent is put into possession of a stranded vessel by the master, and by his order tenders services to and pays money for the cargo, he has a lien upon the cargo, the ship having broken up, for the full amount of his costs and charges. *Hingston* v. *Wendt* (Queen's

Salvage—*continued.*

Bench, Jan. 18, and Feb. 8, 1876, Blackburn and Lush, JJ.).

lien of master not transferred to agent. *See* "*Pro ratâ* Freight."

life and cargo by different salvors: Held, Brett, J. A., dissenting, affirming the decision of Sir Robert Phillimore, that where life salvage is performed by one set of salvors, and cargo salvage subsequently by another set of salvors, the cargo so salved is liable to contribute towards the reward due to the life salvors under the provisions of the Merchant Shipping Act, 1854, sects. 458, 459. *Cargo ex Schiller* (Court of Appeal, Dec. 7 and 11, 1876, and April 21, 1877, James, L. J., Baggallay and Brett, JJ. A.).

life and ship—assisting vessel in distress. *See* "Deviation," and p. 40.

life, but no property salved—master's contract: Held unanimously, affirming the decision of Sir Robert Phillimore, that life salvage is only recoverable where ship, cargo, or freight is saved, so forming a fund out of which the award can be paid, hence ineffectual attempts to save property, though rendered at express request, give no claim to life salvage. Held further, that a contract made by a captain to be binding upon the owner, must be made for his benefit, and that a contract to pay for life salvage of captain and crew would not be such a contract. *The Renpor* (Court of Appeal, April 20, 1883, Brett, M. R., Cotton and Bowen, L. JJ).

life—passengers and crew landed on inhabited island: Held, that when the crew and passengers of a wrecked ship are taken off a barbarous but inhabited island, upon which they have been got ashore in safety, there is no salvage of life entitling the ship so taking them off to life salvage reward in the High Court of Admiralty, even although the wrecked people may be suffering from scarcity of water and exposure, there being no immediate danger. *Cargo ex Woosung* (Admiralty,

Salvage—*continued.*

June 25, July 16, 20, and 30, 1875, Sir R. Phillimore).

life—vessel lost, liability of ship and cargo owners: Held, that where lives and cargo have been salved from a ship, but the ship has been herself totally lost, the owners of the cargo, but not the shipowners, are liable to contribute to the life salvage; life salvage awards can only be made out of the *res* salved, and not against the owners of a ship personally. *Specie ex Sarpedon* (Admiralty, Nov. 13, 20, and 27, 1877, Sir R. Phillimore).

lien upon cargo raised in navigable river with flat by flat owners: Held unanimously, that where a flat laden with a valuable cargo is sunk as a result of sea peril in a navigable river, and the owner of the flat, without entering into any contract with the owners of cargo, but with the consent of the underwriter thereof, raises the flat and cargo, he does not possess any lien on the cargo for the expenses of raising same, and must deliver it to the cargo-owners upon payment of the freight originally agreed upon with them; his contract for raising being with the underwriter, his only remedy is against him. *Castellain* v. *Thompson* (Common Bench, Nov. 21, 1862, Erle, C. J., Williams, Byles, Keating, JJ.). *Refer* p. 150.

loan of navigator to ship with infectious disease on board: Held, that the loan of a navigator by a passing ship to a vessel with an infectious disease on board is a salvage service. *The Skiblander* (Admiralty, Nov. 16, 1877, Sir R. Phillimore).

master refusing to act. *See* "Wreck."

master selling without sufficient efforts made. *See* "Wreck."

master and seamen's share: Held, that where in a salvage action the Court awards 4,000*l.*, and no special danger has been incurred by the master or crew, the service being mainly towage, the Court may apportion 3,000*l.* to the owners of the salving ship. *The Kenmure Castle* (Admiralty, Feb. 17, 1882, Sir R. Phillimore, and Trinity Masters).

Sal.

Salvage—*continued.*

meritorious services—negligence of salvors' agents—salvage incomplete and completed by other salvors: Held unanimously, reversing the decision of Dr. Lushington, that although salvors are responsible for the negligence of their agents, as where a tug employed by them tows a derelict so as to cause her to strand; and although where salvage is not successful there can be no salvage reward, nevertheless, where a salvage is finally effected, and one set of salvors meritoriously contribute to that result, they are entitled to share in the reward, although the services they rendered, standing by themselves, would not have produced the successful result; and no mere mistake or error of judgment in the manner of procuring it, and no misconduct short of that which is wilful and may be considered criminal, will work an entire forfeiture of the salvage. *The Atlas* (Privy Council, July 16, 1862, Right Hon. Lords Chelmsford and Kingsdown, and Sir J. T. Coleridge). *See also Idem*, "derelict vessel"; *and* "unsuccessful attempts."

misconduct of salvors—excessive number of salvors: Held, that misconduct on the part of the salvors other than criminal misconduct, as where they improperly take possession of a vessel flying a signal of distress in excessive numbers and act in defiance of the master, although it works a diminution, does not effect a total forfeiture of reward. *The Marie* (Admiralty Cinque Ports, April 19, 20, 1882, Judge A. Cohen, Q. C.).

misconduct of salvors—forfeiture of award: Held, that where salvors, having taken possession of a vessel whose crew had taken refuge on board their (the salvors) vessel, improperly refuse to put the crew on board again or to take the proferred assistance of a tug, although they themselves had no local knowledge, and further bring the derelict to anchor in an improper place, in consequence of which she was lost, although ship and cargo being subsequently raised realise a considerable sum, the salvors, having by their negligence led the ship into about as great peril as that from which she had been rescued, forfeit all claim to

Salvage—*continued.*

salvage. *The Yan Yean* (Admiralty, May 25 and June 26, 1883, Sir James Hannen, assisted by Trinity Masters).

payment of award by owners. *See* "Sue and Labour Clause."

pilot as salvor: "It has been urged in the argument for the owners that pilots are not to convert their duties into salvage services. This may be a correct position under ordinary circumstances; at the same time it is to be observed that it is a settled doctrine of the Court that no pilot is bound to go on board a vessel in distress to render pilot service for mere pilotage reward. If a pilot, being told he would receive pilotage only, refused to take charge of a vessel in that condition, he would be subjected to no censure; and if he did take charge of her, would be entitled to salvage remuneration." Judgment of Dr. Lushington in *The Frederick.*

pilot as salvor: Held, that a person, whether a pilot or not, who takes charge of a vessel in distress with the consent of those on board, is entitled to salvage reward in the absence of an express agreement to the contrary. *The Anders Knape* (Admiralty, May 13, 1879, Sir R. Phillimore).

pilot as salvor: Held, reversing the decision of Pollock, B., with a jury, that a pilot is entitled to salvage reward if he shows that the vessel in question was in such distress as to be in danger of being lost, and such as to call upon him to run such unusual danger, or incur such unusual responsibility, or exercise such unusual skill, or perform such an unusual kind of service, as to make it unfair and unjust that he should be paid otherwise than upon the terms of salvage reward; as, for instance, where a vessel, though uninjured, is on a lee-shore off a coast unknown to the crew, in a gale, and cannot beat to windward, and is being driven towards dangerous sands, and pilots put to sea at considerable risk, and pilot her to a safe anchorage; or where, the pilot being on board, an unforeseen and extraordinary peril arises to the vessel

Salvage—*continued.*

from which, by unusual services, he extricates her. *Akerblom* v. *Price* (Court of Appeal, May 9, June 3 and 20, 1881, Bramwell, Brett, and Cotton, L. JJ.).

property and not life. *See* "Cargo Claims," p. 40.

rescuing vessel after placing her in a position of danger. *See* "Tug and Tow." *Refer* p. 202.

seamen arresting ship—excessive claim—costs: Held, that where a steamship, disabled by the breaking of her shaft, is towed a distance of about thirty miles, in fine weather, without danger or risk, by another steamship belonging to same owners, although such services are undoubtedly salvage services, they are of so slight a character that the claim instituted on the part of fifteen seamen ought to have been brought in the County Court; and as this had not been done, but proceedings taken in the High Court, and the vessel arrested for 5,000*l.*, the Court awarded 15*l.* only on a value of 105,500*l.*, and ordered the plaintiffs to pay all the costs of the action. *The Agamemnon* (Admiralty, April 23, 1883, Butt, J.).

seamen claiming to set aside agreement between masters: Held, that where a master of one vessel has agreed to tow another for a reasonable named sum, and the crew of the towing vessel institute a salvage action in the High Court disputing the agreement made by their master, the Court will not disturb the agreement on the plea that the crew were no parties to it, and will condemn the crew in the costs of such action. *The Nasmyth* (Admiralty, Feb. 25, 1885, Butt, J.).

seamen's right to recover—cargo-owners' remedy where both vessels same ownery: Held, that if a vessel render salvage services to another vessel belonging to the same owner, which has become unnavigable owing to latent defect in her machinery, which constitutes unseaworthiness, the crew of the vessel rendering assistance are entitled to recover; but the owners of cargo on board the assisted vessel can recover from the owner thereof the full amount of the moneys so paid to the crew of the vessel rendering the salvage services.

Salvage—*continued.*

The Glenfruin (Admiralty, March 10, 18, 19 and 31, 1885, Butt, J.).

ship and cargo owners' contribution: Held, that where salvage services are rendered to ship, freight, and cargo, the shipowners, in the absence of agreement to the contrary, are liable only in respect of salvage of ship and freight, and not in respect of cargo; and that it is the duty of the owners of the ship rendering the salvage services to require a bond from the consignees of the cargo securing payment by them of salvage in respect of the cargo. *The Raisby* (Admiralty, May 19, 1885, Sir James Hannen). *See also Idem*, "towage agreement."

specie contribution: Held, that salvage is payable by ship, freight, and cargo at risk, without distinction as to nature of cargo; specie, although salvable at a less cost *pro ratâ* than other cargo, contributes thereto in the same proportion as other interests involved. *The Longford* (Admiralty, Feb. 16 and 17, 1881, Sir R. Phillimore). *See also* "General Average."

tender—costs: Held, that where in a salvage action defendants with their statement of defence tender and pay into Court a sum of money, which the Court holds is sufficient, the Court will order the defendants to pay the plaintiffs' costs up to the date of such statement of defence, unless it be shown that the plaintiffs have acted unreasonably in refusing an offer made before suit. Costs need not accompany such payment into Court, as the said payment is an acknowledgment that the liability for costs is admitted. *The William Symington* (Admiralty, Oct. 28, and Nov. 4, 1884, Butt, J.).

towage distinguished from: "I must consider at the outset what are the principles which distinguish a salvage service from a mere service of towage, as they have been laid down and adopted in former decisions of this Court. Without attempting any definition which may be universally applied, a towage service may be described as the employment of one vessel

Sal.

Salvage—*continued.*

to expedite the voyage of another when nothing more is required than accelerating her progress. Dr. Lushington, *The Princess Alice* (3 W. Rob. 138).

towage distinguished from: Held unanimously, affirming the judgment of Alexander James Johnson, Esq., Deputy Judge of Her Majesty's Vice-Admiralty Court of New Zealand, that service rendered to a vessel which is in no actual or immediate danger, for the purpose of expediting her voyage, when nothing more is required than to accelerate her progress, are towage, and not salvage, services. *The Strathnaber* (Privy Council, Dec. 7 and 8, 1875, Right Hon. Sir R. Phillimore, Sir Montagu E. Smith, and Sir Robert P. Collier).

towage—crew's share: Held, that where a steamship carrying fore and aft sails only, and not rigged for sailing, breaks her main-shaft, and, on signalling for assistance, is taken in tow by another steamer, and assisted into port, a distance of forty miles, the weather at the time being fine, no agreement being made, but the amount left to be settled between owners, that is a salvage service, and the crew are entitled to participate in the amount agreed upon. *The Jubilee* (Admiralty, Dec. 16, 1879, Sir R. J. Phillimore).

towage agreement—liability of ship and cargo owners: Held, that if an agreement be made by a vessel in distress to be towed for a stipulated sum, it is not sufficient if the shipowner pay into Court the proportion of the amount payable by ship and freight. The credit of the shipowner is pledged in such cases and the entire amount is payable by him. *The Cumbrian* (Admiralty, June 30, 1887, Butt, J.). *Refer* p. 205.

towage services—tow afterwards lost—master's agreement: Held, that where a master of a disabled vessel enters into an agreement with another vessel to tow her and stand by her, and undertakes that the vessel shall be paid for time and for towing already done and to be done, and the towed vessel is subsequently abandoned and becomes a total loss, the agreement

Salvage—*continued.*

was a reasonable one, and one which the master in his position as agent *ex necessitati* for his owners had power to enter into, and the vessel so towing is entitled to be paid for the services rendered prior to and after the agreement. *Owners of S.S. Wellfield* v. *Adamson and Short* (Admiralty, Feb. 27, 1884, Butt, J., assisted by Trinity Masters).

[NOTE.—In this case, the towage being conducted under considerable difficulty, the Court awarded 400*l.*, being 100*l.* for each day of services rendered.]

towing vessels in distress. *See* "Deviation."

underwriters paying salvage expenses—liability of re-insurers. *See* "Sue and Labour Clause."

unsuccessful attempts: Held, that where a vessel engaged in rendering salvage services is compelled, in consequence of the nature of her cargo, to abandon the service before it is completed, she is not deprived thereby of the right to recover for the services rendered, and if she have towed the vessel but eighty-five miles towards a place of safety, and thereafter given up further attempts, the vessel being subsequently saved is liable in a reasonable amount. *The Carmella* (Admiralty, Jan. 11, 12, and 22, 1884, Sir James Hannen, assisted by Trinity Masters).

unsuccessful attempts: Held, that where salvors, in answer to a request for assistance, render services which, through no fault of theirs, are ineffectual, they are not entitled to reward, unless by their services they confer actual benefit on the salved property ultimately saved by other salvors. *The Cheerful* (Admiralty, Nov. 4 and 5, 1885, Butt, J., assisted by Trinity Masters). *See also Idem*, "derelict vessel;" *and* "meritorious services."

without benefit of. *See* "Illegal Insurance."

Scarcity of Lighters,

merchant's liability. *See* "Lay Days," pp. 138, 141.

Scuttle-Hatch,

cargo under, damaged. *See* "Cargo Claims," p. 45.

Scuttling Ship
to extinguish fire. *See* "General Average."

Sea-Cocks
left open, foundering in port. *See* "Seaworthiness."

Seal and Signature,
valid policy. *See* "Mutual Insurance."

Seamen
and salvage. *See* "Salvage," pp. 204, 206.
engaging same. *See* "Crimping."
loss of life, representatives' claim. *See* "Collision," p. 70.

Seamen's Wages,
charterer to pay crew—allotment note: Held, that if the registered owner of a ship charters her on the terms that the charterer appoints the master and pays the crew, and the master so appointed engages a crew, the charterer having failed, the representatives of the crew cannot claim wages as against the registered managing owner on an allotment note granted by the charterer. *Maklerrid* v. *West* (Court of Appeal, Jan. 15, and Feb. 21, 1876, Field and Mellor, JJ.).
compromising claim—solicitor's lien: Held unanimously, reversing the decision of Sir Robert Phillimore, that where in an action by seamen for wages the defendants and plaintiffs come to terms behind the back of the plaintiffs' solicitors, and the plaintiffs fail to pay their solicitors' costs, the solicitors cannot obtain an order that the defendants shall pay their costs, unless they make out a clear case of fraud between the plaintiffs and defendants to deprive them of their costs, or unless they have notified the defendants not to pay any moneys to the plaintiffs until their lien thereupon be satisfied. *The Hope* (Court of Appeal, June 7, 1883, Brett, M. R., and Lindley and Fry, L. JJ.).
lien for same—sub-charter of ship: Held, that a seaman's claim for wages has priority over a claim for payments made for light dues and towage of sailing vessel from sea to port; also that where a ship is sub-chartered by original charterers at a higher rate of freight, the freight due under the sub-charter is liable to pay wages, even though a part only

Seaman's Wages—*continued.*

of such freight is due to the shipowners under the original charter. *The Andalusian* (Admiralty, Aug. 10, 1886, Butt, J.).

lien, order of payment. *See* "Lien"; "Master's Wages, &c."

slops, order of payment. *See* "Master's Wages, &c."

under foreign flag. *See* "Foreign Flag."

voyage not proceeded upon: Held, that seamen engaged by a master, the paid servant of the charterers, to work on board a vessel while in port, which vessel never sails on her intended voyage, and who were discharged without being paid, owing to a dispute between owners and charterers, have a lien on ship for their wages, according to the practice in the Admiralty Division, in priority to all other mortgages and charges whatsoever, they not being bound to look into the title of the master who appoints them to ascertain whether he is the servant of the owners or the charterers. *The Great Eastern Steamship Co.* (Chancery Division, August 3 and 5, 1885, Chitty, J.).

Seaman's Discharge Note,

action for damages: Held, that a seaman who has been refused a certificate of discharge by the master of a vessel engaged in the coasting trade, cannot bring an action against the master for damages, but that his only remedy is by summons before a court of summary jurisdiction under the Merchant Shipping Act, 1854. *Vallance* v. *Falle* (Queen's Bench, May 23, 1884, Stephen and Mathew, JJ.).

Seaworthiness,

See "Collision," pp. 63, 72.

"If the voyage be such as to require a different complement of men, or state of equipment, in different parts of it, as if it were a voyage down a canal or river, and thence across the open sea, it would be enough if the vessel were, at the commencement of each stage of the navigation, properly manned and equipped for it." Judgment of Baron Parke in *Dixon* v. *Sadler*.

Seaworthiness—*continued.*

bill of lading warranty thereof — port improperly fastened: Held unanimously, reversing the decision of the First Division of the Court of Session (Lord President Inglis, Lords Deas, Mure, and Shand), that, in the absence of express words to the contrary, a bill of lading implies a warranty of seaworthiness, and all the exceptions in it must be taken to refer to a period subsequent to the sailing of the ship with the goods on board; that, therefore, if a steamer sail from a port of loading with a port improperly and negligently fastened, and which, as a consequence of such fastening, admits water to the cargo, not immediately but some days after putting to sea, the exception as to peril of the sea, however caused, does not apply. *Steel* v. *State Line S.S. Co.* (House of Lords, July 19 and 20, 1877, Lord Chancellor Cairns, Lords O'Hagan, Selborne, Blackburn, and Gordon). *Refer* p. 45.

general average—loss through unseaworthiness: Held, that owners of cargo cannot plead, in defending an action brought by a shipowner for contribution for an average loss, that the vessel was unseaworthy at the time of sailing, but they are entitled to succeed if they prove that the loss was occasioned by her unseaworthiness. *Schloss* v. *Heriot* (Common Bench, April 22, 1863).

general average—inherent vice. *See* "Machinery Claims."

latent defect, machinery. *See* "Salvage," p. 204.

latent defect—shaft—bill of lading—warranty: Held, that the warranty of seaworthiness implied in a bill of lading is an absolute warranty that the ship shall be in fact fit for the voyage, and not that the shipowner shall take all reasonable care to make her so fit—hence a latent defect in shaft existing prior to the commencement of the voyage, which it was impossible to detect, is a breach of the shipowner's warranty of seaworthiness, and the excepted perils in the bill of lading have no application to the case of a ship sailing in an unseaworthy condition. *The Glenfruin* (Admiralty, March 10, 18, 19, and 31, 1885, Butt, J.).

latent defect—telegraph cable: Held, that underwriters

Seaworthiness—*continued.*

on a telegraph cable are not liable for the chemical action of sea-water on a portion of the cable exposed through some defect in the outer covering used to protect the wire. *Paterson* v. *Harris* (Queen's Bench, May 29, 1859, Cockburn, C. J.).

"An injury of this nature, not arising from the external violence or mechanical action of the winds and waves, but which was the natural and necessary consequence of the ordinary action of the sea-water on the cable, in the state in which it was when immersed in the sea, is not comprehended in the perils insured against." Judgment of Cockburn, C. J., in above case.

negligence of crew—sea-cocks left open—foundering in harbour: Held unanimously, that where a steamer fills with water in harbour from a cause not precisely ascertainable, but probably through one or more of the sea-cocks having been negligently left open, and she is afterwards pumped dry and found to be perfectly seaworthy, underwriters on cargo are liable for the damage which was not caused by anything which would ordinarily occur in the voyage, but by an accidental circumstance caused by the negligence of the crew. *Davidson* v. *Burnand* (Common Pleas, Nov. 30, 1868, Willes, Keating, and Brett, JJ.). *Refer* p. 212.

onus of proof thereof—presumption of unseaworthiness: Held unanimously, reversing the decision of Field, J., that the onus of proof of unseaworthiness in an action on a policy of insurance is always upon the underwriter. Where it is shown, however, that a vessel shortly after leaving port is compelled to return disabled, or is totally lost, the shortness of the time may raise a presumption that she was not lost or damaged by perils insured against, but by reason of unseaworthiness before sailing, which presumption requires to be rebutted by the shipowner's evidence, and whether such presumption is to prevail or not is a question for the jury. *Pickup* v. *The Thames and Mersey Marine Insurance Co., Limited* (Court of Appeal,

Seaworthiness—*continued.*

March 5, May 15 and 16, 1878, Brett, Cotton, and Thesiger, L. JJ.).

shipowners' contract of carriage—wheat—crossing the Atlantic: "It is an engagement to carry and to deliver at a certain port in this kingdom the wheat so shipped. What is the meaning of the contract created by those words supposing they stood alone? I think there cannot be any reasonable doubt entertained that this is a contract which not merely engages the shipowner to deliver the goods in the condition mentioned, but that it also contains in it a representation and an engagement—a contract—by the shipowner that the ship on which the wheat is placed is at the time of its departure reasonably fit for accomplishing the service which the shipowner engages to perform. Reasonably fit to accomplish that service the ship cannot be unless it is seaworthy. By seaworthy I do not desire to point to any technical meaning of the term, but to express that the ship should be in a condition to encounter whatever perils of the sea a ship of that kind, and laden in that way, may be fairly expected to encounter in crossing the Atlantic. If there were no authority upon the question, it appears to me that it would be scarcely possible to arrive at any other conclusion than that this is the meaning of the contract." Judgment of Lord Chancellor in *Steele* v. *The State Line Steamship Co.* *Refer* pp. 35, 42.

unascertained peril—foundering at anchor: Held unanimously, affirming the decision of the Exchequer Chamber (Bramwell, Pollock, and Amphlett, BB., Blackburn, Lush, and Quain, JJ.), and a prior decision of the Court of Common Pleas (Lord Coleridge, C. J., Brett and Denman, JJ.), that every ship is presumed to be seaworthy until the contrary be proved; that where a vessel founders at her anchors while loading in a tidal river, it is for the jury to say, taking into account the class and state of repair of the vessel, and her behaviour on previous voyages, whether the leakage arose from unseaworthiness or from some "extra-

Seaworthiness—*continued.*

ordinary though invisible and unascertained peril of the seas." *Anderson* v. *Morice* (House of Lords, June 27 and 29, July 3 and 27, 1876, Lords Chelmsford, Hatherley, O'Hagan, and Selborne).

warranty not implied in time policy—cause of loss: Held unanimously, reversing the decision of the Exchequer Chamber (Coleridge, C. J., Cleasby and Pollock, BB., Brett, J., and Amphlett, B., dissenting), and confirming a prior decision of the Court of Queen's Bench (Blackburn and Quain, JJ.), that there is no implied warranty of seaworthiness in an ordinary time policy at any period of the risk. Held, further, that in ascertaining whether a vessel is lost by perils of the sea, it is the near or proximate, and not the remote, cause of loss which is to be looked at, and that, therefore, if a vessel in a helpless condition from unseaworthiness be lost, partly because of such unseaworthiness, and partly because of the weather being thick, the loss is a loss by perils of the sea. *Dudgeon* v. *Pembroke* (House of Lords, March 23, 1877, Lord Chancellor Cairns, Lords Penzance, O'Hagan, Blackburn, and Gordon).

wear and tear—time policy—negligence of crew: Held, that a loss resulting from the explosion of a boiler, occasioned by the negligence of those who had charge of it, in that they omitted to clean out the boiler at regular intervals, and allowed the bilge-water to accumulate and to wash the outside of the boiler plate, the thickness of which was reduced from three-eighths to one-eighth of an inch, and, further, worked the boiler at a pressure of 50 lbs., which was greater than was consistent with its age and condition, is a loss covered by a time policy on hull and machinery, not being the direct result of "wear and tear," but one covered by the word "fire," and within the general terms of the policy; owners not claiming for a new boiler, but for the loss or damage to the ship. The plea of negligence of crew is no defence to an action on a policy. There is no warranty of seaworthiness in a time policy. *The West India and Panama Telegraph Co.*,

Seaworthiness—*continued.*

Limited v. *The Home and Colonial Marine Insurance Co., Limited* (Court of Appeal, Nov. 11, 12, 13, and 15, 1880, Lord Chancellor, and Cockburn, C. J., and Brett, L. J.). *Refer* p. 154.

Second Mortgage.

See "Mortgage."

Security,

bill of lading as such simply—liability of holder for freight. *See* "Bill of Lading," p. 19.

mortgagee's, impaired by charter. *See* "Mortgage."

Seine Pilotage,

French law. *See* "Compulsory Pilotage."

Seizure

by natives for plunder. *See* "Capture and Seizure."

Seller's Risk,

part cargo only shipped. *See* "Contract of Sale and Purchase."

Serious Damage

to ship, involving master's certificate. *See* "Board of Trade Inquiry."

Service of Writ.

See "Arrest of Ship."

Services of Owner

of stranded vessel. *See* "Sue and Labour Clause."

Set-off

to claim—unpaid premium. *See* "Premium."

Settling Claim

on incorrect adjustment. *See* "Average Adjustment."

of seamen unknown to their solicitor. *See* "Seamen's Wages."

Shaft,

bad workmanship. *See* "Ship Repairers."

broken, fore and aft sails only. *See* "Salvage," p. 206.

latent defect in. *See* "Seaworthiness." *Refer* p. 153.

Shares and Shareholders.

See "Co-ownership."

Shifting,
during discharge, custom of port. *See* "Lay Days."
from unsafe to safe port—insurance. *See* "Demurrage."
in port for stiffening. *See* "Voyage."

Ship,
building—distraint for rent of yard. *See* "Lien."
mortgaged—policy void without notice. *See* "Mutual Insurance."
mud-hopper is a ship. *See* "Barge not propelled by oars."
unregistered launch not a ship. *See* "Limitation of Liability."

Ship Agent,
lien for salvage expenses. *See* "Salvage," p. 199. *Refer* p. 183.

Shipbroker
liable for pilotage. *See* "Pilotage."

Shipowner's
contract of carriage. *See* "Seaworthiness," and p. 48.
contribution to salvage. *See* "Salvage," pp. 205, 206.
liability for removal of wreck. *See* "Removal of Wreck."

Ship Repairers,
delay in delivery after repairs—items of damages—overlooker passing bad workmanship: Held, that if ship repairers contract to do certain work to a vessel within a certain time, and become bankrupt before the work is completed, and the trustee completes the work, but not within the contract time, and not efficiently, the shipowners are entitled to claim upon the bankrupt estate for damages—in the first place, for the nett profit which they could have obtained by chartering the vessel if she had been delivered according to contract, and next, for the amount which it would have taken to rectify the bad workmanship at the time she was delivered and passed by the shipowner's inspector. These claims being admitted, the shipowner can have no claim for deterioration in value whilst under repairs over the contract time. *Trent and Humber Shipbuilding Co., Limited* (Vice-Chancellor Giffard's Court, May 2, 4, and June 1, 1868).

Ship Repairers—*continued.*

liability for unworkmanlike materials: Held, that when a ship repairer had contracted to supply a steamer with a propeller shaft and other fittings, and had supplied useless and unworkmanlike fittings, he is liable not only to defray the cost of new and proper materials, but also for damages for detention of the steamer while such are being supplied. *Wilson* v. *General Screw Collier Co.* (Queen's Bench, Dec. 21, 1877, Cockburn, C. J.).

Ship Store Dealer

and managing owner. *See* "Managing Owner."

Ship's Arrival,

six days after. *See* "Bottomry."

Ship's Husband.

See "Managing Owner."

Ship's Log,

entries signed two days after event. *See* "Log-book."

Ship's Papers,

master has no lien on. *See* "Master's Wages, &c."

Ship's Risk

from shore to ship. *See* "Charter-party," p. 52.

Shore to Ship

at ship's risk. *See* "Charter-party," p. 52.

Short Delivery,

all on board delivered—bulk not broken. *See* "Bill of Lading," p. 20.

bills of lading conclusive as to quantity. *See* "Charter-party," p. 52.

full ship—all on board delivered—survey of hatches: Held, that if a vessel, after inspection of hatches on arrival, be passed as a full ship, and it be proved in evidence that all the cargo on board has been delivered, and no thorough tally of output over the vessel's side has been kept, the cargo-owners cannot claim damages for non-delivery from the shipowners, should the full amount of cargo as per bills of lading not be delivered according to dock company's returns. *The Annandale.*

Short Delivery—*continued.*

Birkett, Sperling & Co. v. *Steel, Young & Co.* (Nisi Prius, March 19, 1885, Huddleston, B., and a special jury).

full ship—mate's receipts—survey of hatches: Held, that when a vessel is found, on lifting hatches, to be quite full, and the cargo is discharged in the usual way by a dock company, and turns out a number of packages short, the only conclusion that can be come to is, that the goods were never put on board, although the mate's receipts and bills of lading agreed, and the cargo-owner cannot, under these circumstances, claim damages for short delivery. *The St. Mark; Briggs, Sons & Co.* v. *Bailey, Parker, and Wellesley* (Queen's Bench, March 19, 1885, Wills, J., and a special jury).

mate's receipts—shipowner liable. *See* "Cargo Claims," p. 42.

Short Freight,

full and complete cargo. *See* "Charter-party," p. 51.

margin for error as to quantity of cargo required. *See* "Charter-party," p. 51.

Short of Coal,

spare spars and cargo used for fuel. *See* "General Average,"

towage interrupted—tug short of coal. *See* "Tug and Tow."

Signals of Distress.

See "Salvage"; "Distress."

Signature

by authority of master. *See* "Bill of Lading," p. 21.

Slops,

seamen deserting—lien. *See* "Master's Wages, &c."

Smelling the Ground.

See "Collision," p. 72.

Smuggling by Master.

See "Capture and Seizure."

Snowstorm

not an accident—shipment of cargo prevented. *See* "Lay Days," p. 134.

So near thereto
as she can safely get. *See* "Charter-party."

Solicitor
of sailor, claim settled unknown to him—costs. *See* "Seamen's Wages."

Spare Bunker Space,
full and complete cargo. *See* "Charter-party," p. 51.

Special Charges,
free from average, &c. *See* "Sue and Labour Clause."

Special Clauses
free from average or claim arising from jettison or leakage: Held unanimously, that the proper reading of the above clause, in the absence of punctuation after the word average, is to make "average or claim" refer to "jettison or leakage," leaving the underwriter liable for average or claim not arising from jettison or leakage. *Carr* v. *The Royal Exchange Assurance Co.* (Queen's Bench, Nov. 20, 1863, Cockburn, C. J., and Wightman, Blackburn, and Mellor, JJ.). *Refer* pp. 41, 43.
free from average unless general. *See* "Sue and Labour Clause."
general rule of construction: Held, that in cases of a clause containing a stipulation in favour of any of the parties to a contract, the rule of law is to construe such clause, should there be any doubt about it, against the person in whose favour it is made. *Burton* v. *English* (Court of Appeal, Dec. 17 and 18, 1883, Brett, M. R., and Baggallay and Bowen, L. JJ.). *Refer* p. 18.

Special Construction
of vessel requiring special care in stowage. *See* "Cargo Claims," p. 45.

Special Risk
included in port or ports. *See* "Concealment."

Special Ship,
value for condemnation. *See* "Constructive Total Loss."

Specie,
contribution to salvage. *See* "Salvage," p. 205.
salved, liability for subsequent sacrifice. *See* "General Average."

Speed
in fog, fair-way, &c. *See* "Collision," pp. 66, 68, 70.
over the ground, not through the water. *See* "Collision," p. 72.

Stamps,
charter—part or whole executed abroad. *See* "Charter-party," p. 53.

Stand bye!
See "Collision," p. 66.

Starboard Side,
keep on—narrow channels. *See* "Collision," p. 58.

Stay of Payment,
damages. *See* "Court of Appeal;" "Foreign Plaintiff."

Steerage Way in Fog.
See "Collision," pp. 70, 75.

Steering Gear,
break down of. *See* "Collision," pp. 63, 72; also p. 151.

Stern Light.
See "Collision," pp. 67, 68.

Stiffening,
shifting in port for. *See* "Voyage."

Stop! Stop and Reverse!
See "Collision," pp. 66, 75.

Stoppage in Transit,
delivery of part cargo—*transitus* not at an end: Held unanimously, that where goods are placed in the possession of a shipowner as carrier, to be carried for the vendor to be delivered to the purchaser, the *transitus* is not at an end so long as the carrier continues to hold the goods as carrier, and is not at an end until the carrier by agreement between himself and the consignee agrees to hold the goods for the consignee not as carrier, but as his agent. The same principle will apply to a warehouseman or

Stoppage in Transit—*continued.*

wharfinger. The delivery of a portion of the goods by the shipowner, and the payment of freight on such portion, does not put an end to the *transitus* as regards the portion not so delivered. *Ex parte Cooper, Re McLaren* (Court of Appeal, Feb. 20, 1879, James, Brett and Cotton, L. JJ.).

insolvency of buyer of cargo. *See* "Freight."

sale free on board: Held, that the delivery of goods by a vendor on board a ship, chartered by the purchaser, is only constructive and not actual delivery to the purchaser, and the master of the ship, not being an agent of the purchaser, but only a carrier, the *transitus* is not at an end until the goods are actually delivered to the purchaser or his agent, and the vendor has, therefore, the right of stopping the goods *in transitu*, even although the destination of the ship be unknown to him. *Ex parte Rosevear China Clay Co.* (Court of Appeal, April 24, 1879, James, Brett and Cotton, L. JJ.).

Stoppage of Voyage

by shippers of cargo. *See* "Freight."

Stopping Way,

touch and go. *See* "Stranded, Sunk or Burnt."

Storing,

and or forwarding—freight underwriters. *See* "Sue and Labour Clause."

Stowage,

See "Cargo Claims," pp. 41, 45. *Refer* p. 16.

not liable for defective. *See* "Indemnity Association."

unlawful act of master. *See* "Master's Agency."

Stranded Ship,

See "Abandonment."

insured absolute total loss only, owner taking no steps to save vessel. *See* "Absolute Total Loss."

master selling. *See* "Master's Agency."

proceeding without repairs and damaging cargo. *See* "Cargo Claims," pp. 42, 44.

tug putting vessel ashore. *See* "Tug and Tow."

"Stranded, Sunk or Burnt,"
goods free from average unless. *See* "Sue and Labour Clause."
stopping way—floating on cargo: Held, by verdict of jury, that a vessel taking the ground, even where not expected to do so, stopping her way, but immediately refloating and proceeding, does not bring the case within the meaning of the word "stranded."
Held, by verdict of jury, that a vessel water-logged, even when the water is level inside and outside of her, and floating on her cargo simply, does not come within the meaning of the word "sunk." *Bryant & May* v. *London Assurance Corporation* (May 5, 1886, before Grove, J., and a special jury).

Structural Alterations,
cabins not replaced. *See* "Damages not repaired."
new and old register. *See* "Limitation of Liability."

Sub-Agent
selling beyond limit of price, right to proceeds. *See* "Sale of Ship."

Sub-Charter,
seaman's lien upon profits thereof. *See* "Seaman's Wages."

Substituted Expense,
auxiliary screw. *See* "General Average."

Substituting
one cargo for another which has been damaged. *See* "Cargo."

Sue and Labour Clause, &c.,
expenses not particular average. *See* "Constructive Total Loss."
freight in port of distress—storing or forwarding: Held unanimously, that where a ship is in a port of distress, and is not condemned, the proper course to pursue with regard to the freight is to land and store the cargo pending the repairs to the ship, then to re-ship the cargo and carry it to its destination. If a ship-owner avails himself of any other mode of conveyance, the utmost the underwriters on freight will be com-

Sue and Labour Clause, &c.—*continued.*

pelled to pay will be the cost of landing and storing as above, or to repay the amount of the least onerous mode which the plaintiffs might have adopted to avert the loss of freight. *Lee* v. *Southern Insurance Co.* (Common Pleas, May 2 and 9, 1870, Bovill, C. J., and Keating, Smith and Brett, JJ.). *Refer* p. 119.

goods free from average: Held, that in a policy on goods the clause "free from average unless general, or the ship be stranded, sunk or burnt," frees the underwriter from liability to contribute to "special charges" incurred at a port of refuge, even although the ship be constructively condemned, and the "special charges" incurred in forwarding the goods to avoid a total loss thereof. *Booth* v. *Gair* (Common Bench, Nov. 7 and 13, 1863, judgment of Erle, C. J.).

re-insurance—underwriters incurring expenses—floating, &c.: Held unanimously, varying the decision of Mathew, J., that where underwriters on a vessel refuse abandonment and incur expenses in floating a stranded vessel, upon which their total loss ultimately amounts to 112 per cent., they cannot recover more than 100 per cent. from the underwriters with whom they have re-insured with the sue and labour clause in the policy, because such clause only gives to the owners, their "factors, servants and assignees," the right to sue and labour thereunder, and the underwriters acted in none of these capacities. *Uzielli* v. *The Boston Marine Insurance Co.* (Court of Appeal, Oct. 30 and 31, and Nov. 10, 1884, Brett, M. R., and Cotton and Lindley, L. JJ.).

remuneration for services rendered: Held, that where an owner whose vessel is stranded, and in a position of peril exerts himself by employing salvors, providing funds to procure pumps, &c., and ultimately saves the cargo and brings it to its destination, selling by auction such portion thereof as could not be identified after careful sorting, and handing the other portion to the receivers thereof, he is not entitled to recover in general average any amount whatever, as agency, arranging for salvage operations, receiving cargo, meeting

Sue and Labour Clause, &c.—*continued.*

and arranging with consignees, receiving and paying proceeds, and generally conducting the business, these being expenses incurred by the shipowner in earning his freight. *Schuster* v. *Fletcher* (Queen's Bench, May 24, 1878, Cockburn, C. J., and Mellor, J.). *Refer* p. 227.

salvage and general average—100 per cent. paid: Held unanimously, reversing the decision of Bramwell, Brett and Cotton, L. JJ., and confirming a prior decision of Mellor and Lush, JJ., that an owner cannot recover, under the sue and labour clause, a proportion of salvage or general average expenses in addition to the amount for which the policy is underwritten, which amount is absorbed as contribution to repairs. *Aitchison* v. *Lohre* (House of Lords, July 15, 18 and 31, 1879, Lord Chancellor Cairns, Lords Hatherley, O'Hagan, Blackburn and Gordon).

total loss policy—salvage: Held unanimously, reversing the decision of Lindley, J., that a policy of insurance against total loss, with the sue and labour clause included, does not cover salvage award, and the underwriters are not liable to contribute to such award, salvage not being within the sue and labour clause. *Dixon* v. *Whitworth*; *Dixon* v. *Sea Insurance Co.* (Court of Appeal, March 6, 1880, Bramwell, Baggallay and Thesiger, L. JJ.).

Suez Canal Pilotage.

See "Compulsory Pilotage."

Sufficient Water,

dock as ordered. *See* "Lay Days," p. 139, and pp. 47, 48, 136.

Sundays,

lay days, working days. *See* "Lay Days," p. 141.

Sunken Wreck,

collision with. *See* "Collision," p. 59.

general average contribution to expenses of floating. *See* "Constructive Total Loss." *Refer* pp. 150, 201.

liability of harbour authorities: Held, that where a ship is injured by striking a sunken wreck, situated in a channel, for the lighting and buoying of which the

Sunken Wreck—*continued.*

harbour authorities receive, indirectly even, certain dues payable by the damaged vessel, the harbour authorities having taken over the wreck and neglected to remove it, or to mark its position, are liable for the injury received by the vessel striking it. *Dormont* v. *Furness Railway Co.* (Queen's Bench, March 10, and April 5, 1883, Kay, J.).

lighting wreck: Held unanimously, reversing the decision of Sir R. Phillimore, that where a vessel is sunk in a navigable river by collision for which she is solely to blame, and the harbour-master has been informed thereof, and requested to light the wreck and has undertaken to do so, the owners of the vessel are not liable for the non-lighting of the wreck, or for damages received by another vessel coming in contact therewith. *The Douglas* (Court of Appeal, June 21, 1882, Lord Coleridge, C. J., and Brett and Cotton, L. JJ.).

removal thereof—lien on cargo. *See* "Limitation of Liability." *Refer* p. 201.

removal—liability of shipowner. *See* "Removal of Wreck."

Survey for Class,

repairs enabling vessel to pass. *See* "Collision," p. 70.

Survey of Hatches,

full ship. *See* "Short Delivery."

Sword-fish

piercing ship. *See* "Cargo Claims," p. 39.

Taking Tow

into a position of danger. *See* "Tug and Tow."

Tally over Side.

See "Short Delivery." *Refer* p. 21.

Telegram

arresting ship, master disregarding. *See* "Arrest of Ship."

Telegraph,

broker omitting to use. *See* "Broker omitting to telegraph."

agent neglecting to advise principal of disaster. *See* "Concealment."

Temporary Repairs,
auxiliary screw. *See* "General Average."

Ten Days
after final sailing. *See* "Freight Advanced."
after receipt in United Kingdom—stamp. *See* "Charter-party," p. 53.
double pay. *See* "Master's Wages, &c."

Tenants in Common,
marks obliterated. *See* "Total Loss."

Tender
and payment into Court. *See* "Salvage," p. 205.
waiver of tender through excessive demands: Held unanimously, that where a master demands from his charterers a larger sum than he is entitled to, and in such a manner as to announce that the tender of a smaller sum would be useless, this constitutes a waiver of tender. *The Norway* (Privy Council, July 20, 1865, Right Hon. Knight-Bruce, and J. T. Coleridge and E. V. Williams, L. JJ.).

Termination of Agency,
See "Concealment."

Termination of Risk,
moored in river. *See* "Liberty to Dock."
moored twenty-four hours in good safety—damaged vessel: Held unanimously, that where in a policy of insurance on ship the risk is stated to continue "until she hath moored at anchor twenty-four hours in good safety," and for thirty days after arrival, the risk thereunder expires after the expiration of thirty days from the arrival and mooring of the vessel, and her having remained as a vessel, and in possession and control of her owners, though not sound, for twenty-four hours. That, in fact, though the vessel be damaged and requires pumping, so long as she is moored as a ship, and remains a ship for the thirty days, the policies expire; and if a total loss occur before the vessel is repaired, underwriters under the aforesaid policy are not liable. *Lidgett* v. *Secretan* (Common Pleas, Jan. 24 and Feb. 7, 1870, Bovill, C. J., and Willes and Brett, JJ.).

Termination of Voyage,
intermediate port. *See* "General Average."
port of discharge. *See* "Limits of Port."
port of shipment. *See* "General Average."
shifting after arrival. *See* "Voyage."
shifting for stiffening. *See* "Voyage."

Test of Anchors
and chains, warranty. *See* "Chain Cables and Anchors."

Thames Conservancy Rules.
See "Collision," pp. 73, 74.

Third Party,
fraud or negligence of. *See* "Concealment."

Thirds Deduction,
first voyage. *See* "Voyage."

Thirty Days
after arrival. *See* "Termination of Risk."

Three Red Lights.
See "Collision," p. 63.

Tides, Waiting for.
See "Lay Days," pp. 136, 139.

Time Charter,
charterers refusing to pay disbursements. *See* "Master's Wages, &c."
general ship—freight in arrear. *See* "Lien."
master's draft for provisions and coals. *See* "Master's Wages, &c."

Time Policy,
on chartered freight. *See* "Chartered Freight."
on hull and materials. *See* "Average under 3 per Cent."
or voyage policy, or both. *See* "Voyage."
lapse in course of voyage—probabilities of loss: Held, that in the case of a twelve months' policy lapsing eighteen days after last sailing upon a voyage of twenty-five days' duration, and not renewed or sought to be renewed, if a vessel under such circumstances be never again heard of, and there be no direct evidence as to the date upon which she was lost, the assured are not bound to prove that the loss occurred during

Time Policy—*continued.*

the continuance of the policy, and that if the evidence points to the vessel having probably been lost prior to the lapse thereof, the underwriters must pay the loss under such policy. *Reid and others* v. *Standard Marine Insurance Co., Limited* (July 12, 1886, before Field, J. and a Special Jury).

no implied warranty of seaworthiness. *See* "Seaworthiness."

Title,

master's authority—sale—ship, &c. *See* "Abandonment."

To Arrive,

sale of cargo—right to policies of insurance. *See* "Sale of Cargo."

Tonnage,

new and old register—crew-space, &c. *See* "Limitation of Liability."

Total Loss,

before repairs effected—good safety. *See* "Termination of Risk."

cargo which might have been saved becoming. *See* "Wreck."

freight—ship condemned. *See* "Constructive Total Loss."

incurring expenses to avoid. *See* "Sue and Labour Clause."

insurance against—salvage award. *See* "Sue and Labour Clause."

marks becoming obliterated: Held unanimously, reversing the decision of Shee, J., with a jury, that where, in consequence of perils of the sea, a cargo belonging to different consignees becomes so mixed together as to be undistinguishable, the marks being obliterated, there is yet no actual or constructive total loss, and the owners of the goods become tenants in common of the whole, in the proportions which they have severally contributed to it. *Spence* v. *The Union Marine Insurance Co., Limited* (Common Pleas, June 11, 1867, Jan. 17, 21, 22, 23, and April 30, 1868, Bovill, C. J., and Willes, Keating and Smith, JJ.).

Total Loss—*continued.*

negligence of crew—wear and tear. *See* "Seaworthiness."

policy lapsing while on voyage. *See* "Time Policy."

sale in port of distress: Held, that where a vessel has put into a port of distress with cargo damaged, so that it is found unfit to be forwarded and is accordingly sold by public auction, the public sale vests the proceeds in the underwriters; and if the owner of the cargo elects not to take the proceeds, which, in the gross, amount to more than the insured value, but from which deductions are claimed and disputed, his underwriters must pay a total loss, and they then acquire all the cargo-owner's rights over the proceeds of the sale. *Saunders* v. *Baring* (Queen's Bench, Feb. 17, 1876, Blackburn and Lush, JJ.).

sale—proceeds disposed of by assured: "The assured may preclude himself from recovering a total loss if, by any view to his own interest, he voluntarily does or permits to be done any act whereby the underwriter may be prejudiced in the recovery of that money. Suppose, for example, that the money received upon the sale should be greater than or equal to the sum insured, if the insured allows it to remain in the hands of his agent or of the party making the sale and treats it as his own, he must take upon himself the consequence of any subsequent loss that may arise of that money, and cannot throw upon the underwriter a peril of that nature." Judgment of Lord Abinger in *Roux* v. *Salvador*.

steamer undervalued. *See* "Value in Policy."

underwriters paying—collision—to blame. *See* "Collision," p. 57.

Touch and Go.

See "Stranded, Sunk, or Burnt."

Towage,

See "Tug and Tow."

priority of lien for seaman's wages over. *See* "Seaman's Wages."

Towage or Salvage.

See "Salvage."

Towing Vessels in Distress,
See "Deviation;" "Salvage."
deviation. *See* "Cargo Claims," p. 40.

Transhipment,
not covered by craft-risk clause. *See* "Craft Risk."

Trial Trip,
officers not appointed—sailing master. *See* "Collision," p. 74.

Trinity Masters,
inspection of damaged vessel by. *See* "Collision," p. 64.

Trustee
of ship repairer's estate, liability of. *See* "Ship Repairers."

Tug and Tow,
delay through accident—demurrage of tug: Held, that where a tug has contracted to tow a vessel from place to place for an agreed sum, and the performance of the contract is delayed in consequence of a collision, for which neither the tug nor the tow were to blame, and which necessitated a stoppage of three days on the part of the tow to clear away wreckage dangerous to her navigation, the tug having contracted to perform the towage for a certain sum must be held to have taken the risks of the contract, and she is not entitled to any sum in the nature of demurrage for extra attendance beyond the agreed sum. *The Hjermitt* (Admiralty, May 4, 1880, Sir R. Phillimore).
exemption from liability—pilot not at fault—tug not exempt. *See* "Compulsory Pilotage."
insufficient power—negligence: Held unanimously, affirming the decision of Sir Robert Phillimore, that a clause in a towage contract exempting tug owners from liability for damage or loss occasioned by the negligence or default of their servants, covers damage occasioned by the act of the master of the tug in taking in tow too many vessels, in contravention of a statutory bye-law of the port in which the towage takes place, although the number of vessels taken in tow causes the tug to be of insufficient power for the service,

Tug and Tow—*continued.*

because it is clear that an action could only lie for negligence, and against that the tug owners are protected by their contract. *The United Service* (Court of Appeal, Nov. 30, 1883, Brett, M. R., and Baggallay and Bowen, L. JJ.).

negligence of salvor's tug. *See* "Salvage," p. 202.

negligence of tug—pilot not at fault. *See* "Compulsory Pilotage."

negligent towage—claim for salvage: Held unanimously, affirming the decision of Sir Robert Phillimore, that it is the duty of a tug, in the absence of express orders from the tow, to tow the vessel in a safe and prudent course, and if this is not done, and the tow gets into a position of danger through the negligence of the tug, the tug cannot sustain a claim for salvage services, but may, on the contrary, be made to pay for loss, say, of anchors and chains, resulting from such negligent towing. *The Robert Dixon* (Court of Appeal, Dec. 8, 1879, James, Baggallay, and Brett, L. JJ.).

short of coal—proof of damage: Held, that if a tug puts to sea with a tow, insufficiently provided with coal, and the towage is as a consequence interrupted, the tug-owners being bound to supply an efficient tug, duly equipped, are liable, notwithstanding a term in their contract excepting negligence of servants; the owners of the tow must, however, prove loss or damage to entitle them to withhold the whole or any part of the agreed contract price of the towage, the contract having been carried out by the return of the tug, and the resumption of the towing after coaling. *The Undaunted* (Admiralty, March 16, 17, 1886, Butt, J.).

stranded through negligence of tug: Held, reversing a decision of the Court of Appeal in Ireland (Bull, C., and Deasy, L. J., Fitzgibbon, L. J., dissenting), and a prior decision of the judge of the Admiralty Court, that where a tug attempted to tow a ship across a bank after the pilot who was on board by compulsion of law had signalled to her to change her course, and the vessel stranded and sustained damage, the fact that

Tug and Tow—*continued.*

the pilot did not cast off the tow-rope on finding his signals disregarded, although in the opinion of the nautical assessors his conduct was "negligent, supine, and inactive," did not amount to contributory negligence on the part of the ship, inasmuch as it was not proved that by so doing the accident would have been avoided, the onus of such proof being on the tug; and that therefore the owners of the ship were entitled to recover from the owners of the tug the damage sustained. *Spaight* v. *Tedcastle* (House of Lords, Jan. 20, 27, 28, and March 7, 1881, Lord Chancellor Selborne, Lords Blackburn and Watson).

waiting for orders from tow: Held, that as a general rule it is the duty of the tow to give orders to the tug, and the responsibility thereof will rest with the tow; but there is no obligation on the tow to be constantly giving orders to the tug as to matters which are specially within the duties of the tug, and if the latter has the means of forming a judgment as to what is to be done, it is her duty to do it without waiting orders from the tow. *The Isca* (Admiralty, Dec. 7, 1886, Sir James Hannen and Butt, J.).

Turn to Unload.

See "Lay Days," p. 140.

Two Months after

receipt in United Kingdom—stamp. *See* "Charter-party," p. 53.

Two-thirds claim

allowed—costs. *See* "Salvage," pp. 68, 69.

Tyne Pilotage.

See "Compulsory Pilotage."

Under-valuation.

See "Value in Policy."

Underwriters (Cargo),

bottomry—limit of liability. *See* "Bottomry."

Underwriters (Hull),
damages not repaired—liability. *See* "Damages not repaired."
liable up to 100 per cent. only. *See* pp. 2, 223.
pay total loss whether recoverable or not. *See* "General Average."
paying on incorrect adjustment. *See* "Average adjustment."
paying total loss—collision—same ownery—limitation action—cannot recover. *See* "Collision," p. 57.
re-insurance—not so stated in policy. *See* "Re-insurance."
removal of wreck—not liable. *See* "Removal of Wreck." *Refer* p. 239.
salving expenses—re-insurance—liability. *See* "Sue and Labour Clause."

Unforeseen
and extraordinary peril—pilotage. *See* "Salvage," p. 203. *Refer* p. 212.

Unloading,
See "Lay Days,"
after cargo shipped—drawing too much water. *See* "Charter-party," p. 47.

Unpaid Premium,
brokers' lien on policies. *See* "Lien."
policies cancelled without notice. *See* "Mutual Insurance."
set-off to claim. *See* "Premium."

Unsafe Berth,
liability of dock authorities. *See* "Harbour Authorities."

Unseaworthiness,
See "Seaworthiness."
insufficient ballast—exceptions in bills of lading, &c. *See* "Cargo Claims," p. 36.

Unstamped Charter-party.
See "Charter-party," p. 53.

Unstamped Policy of Insurance.
See "Mutual Insurance;" "Policy unstamped."

Unsuccessful Salvage.
See "Salvage," pp. 202, 207.

Unusual Danger,
responsibility cast upon pilot. *See* "Salvage," p. 203.

Usage and Custom,
valid custom. *See* "Lay Days," pp. 136, 137. *Refer* "Custom of Port."

Valid Custom,
usage of port. *See* "Lay Days," pp. 136, 137.

Valid Policy,
seal and signature. *See* "Mutual Insurance."

Value, Values,
condemnation values. *See* "Constructive Total Loss."
differing in different policies. *See* "Value in Policy."
fraudulent declaration of. *See* "Open Policy."
general average values. *See* "General Average."
shares of dissentient shareholders. *See* "Co-ownership."

Value in Policy,
cargo-owners recovering excess value — underwriters' claim: Held unanimously, affirming a decision of the Court of Appeal (Bramwell and Brett, L. JJ., Baggallay, L. J., dissenting), which reversed a prior decision of Lord Coleridge, C. J., that, although the value in the policy of marine insurance is conclusive as between the parties for all purposes of the contract, it is not conclusive for other purposes collateral to the contract; that, therefore, underwriters are not entitled to recover from the assured to whom they have paid a full indemnity under a valued policy the amount, or any part thereof, paid the assured by the United States of America, because the assured had proved that the value in his policy was less than the actual value of the goods insured. *Burnand* v. *Rodocanachi* (House of Lords, July 10 and 11, 1882, Lord Chancellor Selborne, Lords Blackburn, Watson, and Fitzgerald).
excessive valuation: Held unanimously, affirming the decision of Smith, J., that where in a policy of insurance the value is stated at a certain sum, it is not open to the underwriter to plead that such value is exorbi-

Value in Policy—*continued.*

tant, and that the policy can only be annulled on a plea of fraud being established. Even where the value in the policy is clearly in excess of the value at the inception of the risk thereunder, unless fraud be proved the underwriter is liable up to the agreed value. *Barker* v. *Jansen* (Common Pleas, Jan. 15, 1868, Bovill, C. J., Willes, Keating, and Smith, L. JJ.).

insurance in excess of value—different values: Held unanimously, that where in a policy of insurance a vessel is valued at a certain sum, the underwriter is not liable to pay thereunder in case of total loss, if it be proved that the owner has already recovered from other sources the amount of the agreed value; or, if less than that amount has been recovered, the underwriter is only liable for his *pro ratâ* of the balance between the amount recovered and the value in his policy. If an owner insures his vessel with different underwriters at different valuations, he is bound by the valuation as between him and each set of insurers, and can only recover the amount which is sufficient to make up his indemnity. *Bruce* v. *Jones* (Exchequer, Jan. 23 and 24, 1863, Pollock, C. B., Martin and Channell, BB.).

repairs exceeding value. *See* "Sue and Labour Clause"; *also* "Abandonment."

under-valuation—total loss paid: Held unanimously, that in a valued policy of insurance, the parties are bound by the value therein named in respect of all rights and obligations which spring out of it. A steamer valued in policy at 6,000*l.* was sunk by another steamer, which ultimately settled for the damage done on the basis of 9,000*l.* for the first-named; the owners sought to participate in the division of the fund, but the Court held, that inasmuch as if the vessel were floated she would belong to underwriters, who had paid the owners the loss, so the funds representing the vessel must belong wholly to them. *North of England Iron SS. Insurance Association, Limited* v. *Armstrong* (Queen's Bench, Jan. 21, 1870, Cockburn, C. J., Mellor and Lush, JJ.).

Value in Policy—*continued.*

"If each of the parties agree that a certain sum shall be deemed to be the value of the thing insured, the underwriter, in the case of a total loss, is not to be at liberty to say that the thing is not worth so much. . . . . And, on the other hand, the party insuring is not at liberty to say that the thing is worth more; he is also bound by the amount agreed upon." Judgment of Lush, J., in above case.

Voiding Policy

without notice. *See* "Mutual Insurance."

Voluntary Payment,

cargo-owners — salvage expenses not. *See* "Cargo-Claims," p. 45.

Voyage,

See "Average under 3 per Cent.;" "Seaworthiness."

first voyage—thirds deduction: Held, that where in a policy of insurance there is to be no deduction of thirds off repairs during first voyage, a voyage is to be taken as an entire trading voyage out and home, so that a vessel proceeding from London to New South Wales with cargo, thence to Madras in ballast, and thence to London, and receiving damages on her passage Madras to London, is to be considered as still on her first voyage, and entitled to be reimbursed the cost of repairing such damages without deduction of thirds. *Pirie* v. *Steel* (Exchequer, June 27, 1837, Lord Abinger, C. B.).

not proceeded upon. *See* "Seamen's Wages."

policies expiring during. *See* "Time Policy."

stopped by shippers of cargo. *See* "Freight."

termination of voyage: "What is the end of a voyage may differ under different circumstances, but here there is a statement in the case that on the 3rd Jan., when the telegram was received by the captain, the vessel was in the outer dock on her way to the inner dock. This to my mind is conclusive. If the policy is treated as an insurance to Antwerp it must surely be treated as lasting up to the time when she came to a state of rest. If she had arrived at the terminus,

Voyage—*continued.*

and was waiting her turn to unload, she might have finished her voyage, but in this particular case I think the voyage was not finished. Something remained to be done which was part of the voyage, or certainly part of the adventure. The matter may be tested in this way. Supposing the sailors had been hired for the voyage, would they have been entitled to leave the vessel in the outer dock? I should say decidedly not. I quite agree with the statement in Arnould on Insurance (4th edit., p. 389), that where there is no clause as to mooring in good safety for any given time, if a vessel got to her port and was in moorings waiting her turn to unload, she would have finished her voyage, but that is not the case here." Judgment of Bramwell, B., in *Stone* v. *Ocean Marine Insurance Co. of Gothenburg*. *Refer* p. 225.

termination at intermediate port. *See* "General Average."

termination at port of discharge. *See* "Limits of Port."

termination at port of shipment. *See* "General Average."

while there after arrival—voyage and time policy: Held unanimously, reversing the decision of the Court of Exchequer (Kelly, C. B., and Amphlett, B., Cleasby, B., dissenting), that a policy of insurance covering a vessel to a certain port and for fifteen days while there after arrival, is both a voyage and a time policy, and does not lapse when the cargo is all out, but continues in force for the fifteen days while there, even if the vessel move from her discharging dock for the purpose of taking stiffening for another voyage. *Gambles* v. *Ocean Marine Insurance Co. of Bombay* (Court of Appeal, Feb. 1, 1876, Lord Chancellor Cairns, Lord Coleridge, C. J., and Mellish, L. J.).

Wager Policies,

See "Illegal Insurance."

over insurance. *See* "Concealment."

Waiting Orders from Tow.

See "Tug and Tow."

Waiver of Tender,

excessive demand. *See* "Tender."

Want of Water,
immediate danger. *See* "Salvage," p. 200.

Warehouse, Warehousing,
cargo, expenses of. *See* "Port of Distress." *Refer* p. 87.
carrier or consignees, agent. *See* "Stoppage in Transit."
port without—river frozen. *See* "Lay Days," p. 137.
risk of craft, transhipment. *See* "Inception of Risk."
temporary repairs, auxiliary screw. *See* "General Average."

Warrant
arresting vessel. *See* "Arrest of Ship."

Warranties,
breach of, by master. *See* "Barratry."
"no St. Lawrence": Held unanimously, reversing a decision of the Second Division of the Court of Session in Scotland, Lord Justice Clerk (Lord Moncrieff), Lords Young and Rutherford Clark (Lord Craighill dissenting), and confirming a prior decision of the Lord Ordinary (McLaren), that where in a policy of insurance a warranty of "no St. Lawrence" between certain dates is inserted, the warranty must be taken as applying to both the Gulf and River St. Lawrence, there being no ambiguity or uncertainty in the clause sufficient to prevent the application of the ordinary rules of construction as to negative words. *Burrell* v. *Dwyer* (House of Lords, Feb. 25, 26, and March 17, 1884, Lord Chancellor Selborne, Lords Blackburn and Watson). *Refer* p. 218.
seaworthiness not implied in time policy. *See* "Seaworthiness."
warranted to tow in and out of port. *See* "Barratry."

Water pumped into Vessel,
fire. *See* "General Average."

Water-logged Vessel,
floating on cargo. *See* "Stranded, Sunk, or Burnt."

Wear and Tear,
damage revealing rotten wood. *See* "Collision," p. 59.
general average claim. *See* "Machinery Claims."
time policy—negligence. *See* "Seaworthiness."

Weather
preventing loading and unloading. *See* "Lay Days," pp. 134, 137, 139 to 141.

Weight,
contents, and value unknown. *See* "Cargo Claims," p. 45.

Wharf
named and unnamed. *See* "Lay Days," p. 138.

Wharfinger,
agent of carrier or consignee. *See* "Stoppage in Transit."
bill of lading indorsed to. *See* "Bill of Lading," p. 17.

Wheat,
contract of carriage. *See* "Seaworthiness."

While there,
after arrival—time and voyage insurance. *See* "Voyage."

Whistle in Fog.
See "Collision," pp. 75, 76.

Wilful Default
not barratry. *See* "Cargo Claims," p. 35.

With Liberty
to dock and undock. *See* "Liberty to Dock."

Withdrawal, Notice of.
See "Mutual Insurance."

Without Benefit of Salvage.
See "Illegal Insurance."

Without sufficient Cause,
ten days' double pay. *See* "Master's Wages."

Wood Cargo
on deck—jettison. *See* "Deck Cargo," and p. 121.

Working Days,
Sundays, &c. *See* "Lay Days," p. 141.

Wreck,
damaging piers. *See* "Damage."
duty to warn vessels of position. *See* "Sunken Wreck."
passengers on a rock—life salvage. *See* "Salvage," p. 194.
removal, liability for. *See* "Removal of Wreck."

Wreck—*continued.*

salvage of cargo—master refusing to act—cargo might have been saved: Held, that when a ship and cargo are in peril of being lost, the captain is called upon to act for the benefit of all concerned, and he is not at liberty to prefer the interests of one of the parties to those of another. Where the vessel is hopelessly lost, and a part of the cargo may be saved by cutting beams, the captain should treat the ship as utterly lost, and have regard only for the interests of the cargo and of the underwriters. The omission of the captain to take any steps towards saving the cargo, at a time when it was probable that his endeavours would be successful, precludes the assured from claiming for a total loss of cargo into whatever condition it might have been brought afterwards. *Currie & Co.* v. *The Bombay Native Insurance Co.* (Privy Council, Dec. 10 and 18, 1869, Lord Chelmsford's judgment).

salvage of cargo and sale—master's agency and duties: Held, affirming the decision of Jessel, M. R., that in the case of the wreck of a vessel the master only becomes agent for the sale of the cargo, so as to bind the owners of the goods entrusted to him for carriage, in case of necessity, and it lies on those who purchase the goods from him to prove that he, before selling, used all reasonable efforts to salve the goods, and have them forwarded to their destination. If salvors cannot be found near the wreck, it is the duty of the master to advertise in and visit neighbouring towns, and if terms cannot be made with any salvors, he ought to consent to salvage without making terms. If he neglect to act in this way, and sells ship and cargo as they lie, cargo-owners can refuse to recognise his agency, and have sale annulled. The master can only make a valid sale of cargo when there are not any means available to him to procure the goods to be carried to their destination as merchantable articles, or when the costs of so doing would clearly exceed their value on arrival. *Atlantic Mutual Insurance Co.* v. *Huth* (Court of Appeal,

Wreck—*continued.*

June 16, 18, 19, 21, and 22, and Nov. 30, 1880, James, Cotton, and Thesiger, L. JJ., Thesiger, L. J., retired before judgment).

Wreckage Cut Away.

See "General Average."

Written Clauses

annulling printed. *See* "Charter-party," p. 52.

Wrong Manœuvre,

tug making. *See* "Compulsory Pilotage."

Wrong Manœuvre observed.

See "Collision," p. 66.

Wrong-doer,

master cannot recover bond for collision claim. *See* "Collision," p. 65.

owner of both colliding vessels cannot recover. *See* "Collision," p. 57. *Refer* pp. 38, 204.

underwriters having paid total loss to owner of two colliding vessels cannot recover. *See* "Cargo Claims," p. 57.

Wrongful Dismissal.

See "Master's Wages, &c.;" "Foreign Flag."

Wrongfully

taking possession of a cargo. *See* "Acceptance in exchange for documents."

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